Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

GERALD G. BARTON, WILLIAM W. VAUGHAN, III and JOE W. WALSER,

Petitioners,

v.

LANDMARK LAND COMPANY OF CAROLINA, INC., a Delaware Corporation, et al.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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281 pp

QUESTION PRESENTED

The question presented in this case is whether the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") confers such broad and preemptive authority upon the Office of Thrift Supervision ("OTS") that an OTS-targeted bank's corporate subsidiary that files for protection under the Bankruptcy Act is necessarily precluded from indemnifying its directors for their legal costs incurred in defending OTS civil proceedings brought against them as a result of the bankruptcy filing, upon the rationale that the bankruptcy filing was "a deliberate attempt to undermine the regulatory authority of a government agency" which "cannot constitute good faith conduct, even if such actions benefit the corporation," even though those directors abstained from the corporate vote to file for bankruptcy protection and even though the bankruptcy action successfully preserved the assets of the corporation for the benefit of its creditors.

PARTIES TO THE PROCEEDING

The principal parties to this Petition are: Gerald G. Barton, William W. Vaughan, III and Joe W. Walser, as Petitioners; Landmark Land Company of Carolina, Inc., a Delaware Corporation, Landmark Land Company of Florida, Inc., a Delaware Corporation, Landmark Land Company of Oklahoma, Inc., an Oklahoma Corporation, Landmark Land Company of California, Inc., a Delaware Corporation, Landmark Land Company of Louisiana, Inc., a Louisiana Corporation, Carmel Valley Ranch, a California Corporation, Clock Tower Place Investments, Ltd., a California Corporation, as Debtor-Respondents; Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank as Creditor-Respondent.

The complete list of parties to this bankruptcy proceeding are listed on pages 215-262 on the appendix.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Gerard G. Barton, et al., respectfully request that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit, entered on February 15, 1996.

I. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, in which review is sought is reported at *In re Landmark Land Company of Carolina, Inc.*, 76 F.3d 553 (4th Cir. 1996) and is appended to this petition for writ of certiorari.

The Order on Applications and Fees of Attorneys for Debtor Employees of the United States District Court for the District of South Carolina dated November 9, 1994, is unreported and is appended to this writ of certiorari. The Order on Attorneys Fees for Debtor Employees and Debtor Officers and Directors of the United States District Court for the District of South Carolina dated May 27, 1994, is unreported and is appended to this writ of certiorari.

The Order of the United States Court of Appeals for the Fourth Circuit filed April 15, 1996, denying the Petitioners' Motion for Reconsideration of the Court's denial of the Petition for Rehearing is unreported and is appended to this writ of certiorari. The Order of the United States Court of Appeals for the Fourth Circuit filed April 2, 1996, denying the Petition for Rehearing is unreported and is appended to this writ of certiorari.

The Order on Debtor's Motion to Reconsider the Court's May 27, 1994, Order regarding Indemnification of Officers and Directors of the United States District Court for the District of South Carolina dated October 5, 1994, is unreported and is appended to this writ of certiorari. The Order on Motions to Intervene in Motion to Reconsider Order regarding Indemnification of Officers and Directors of the United States District Court for the District of South Carolina dated August 31, 1994, is unreported and is appended to this writ of certiorari.

II. JURISDICTION

The judgment of the Court of Appeals was entered on February 15, 1996. The Court of Appeals denied a Petition for Rehearing on April 2, 1996, and denied a Motion for Reconsideration of the Petition for Rehearing on April 15, 1996. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1) (1993).

III. STATUTORY PROVISIONS INVOLVED

Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

11 U.S.C. § 109(a) (1993).

The Corporation shall, as conservator or receiver, and by operation of law, succeed to – all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, account holder, depositor,

officer, or director of such institution with respect to the institution and the assets of the institution.

12 U.S.C. § 1821(d)(2)(A)(1) (1989).

IV. STATEMENT OF THE CASE

The issue before the Court arises from a successful, confirmed Chapter 11 bankruptcy case wherein all unsecured creditors have been paid in full. Petitioners were directors of first and second tier subsidiaries (Debtors) of Oak Tree Savings Bank (Bank), which was wholly owned by the Landmark Land Company, Inc. (Landmark).

In June 1990 the Office of Thrift Supervision (OTS) determined that the Bank was undercapitalized and had demonstrated a pattern of consistent losses. On January 15, 1991, the Bank agreed that its subsidiaries would not enter into any material transaction without prior approval from the OTS. On October 11, 1991, the Debtors filed bankruptcy petitions in South Carolina. Petitioners, officers and directors both of the Bank and of the Debtors, abstained from voting in the Debtors' resolutions to file for bankruptcy.

Two days after the bankruptcy filing, the OTS took control of the Bank and appointed the Resolution Trust Corporation (RTC) as receiver. The Debtors obtained a temporary restraining order and then a preliminary injunction from the bankruptcy court preventing the RTC from replacing their management. The OTS gained control approximately 11 months later when the Court of Appeals lifted the injunction.

Meanwhile, the OTS filed civil administrative charges against Petitioners, charging them with breach of their fiduciary duties to the Bank and fining them an initial one million dollars and five hundred thousand dollars for each day that they failed to take all necessary steps to seek dismissal of the bankruptcy proceedings. The OTS alleged that the Petitioners breached their fiduciary duties to the Bank because they knew that the bankruptcy filings of the Debtors would have a substantially adverse effect on the Bank's ability to collect on the secured and unsecured lines of credit to the Debtors. The OTS also claimed that the Petitioners had violated the terms of the Bank's January 15, 1991 agreement by entering into a material transaction – the filing for bankruptcy on behalf of Bank subsidiaries. The Petitioners hired attorneys to defend them in those administrative actions, which are still pending.

During the 11 month period between the filing of bankruptcy and the RTC finally obtaining control of the Debtors, the Debtors resolved to indemnify the Petitioners for the legal fees and costs that they incurred defending the OTS charges arising out of the bankruptcy filings. Petitioners abstained from voting on those resolutions. On March 26, 1992, the Debtors filed a Reimbursement Motion requesting permission to indemnify the Petitioners pursuant to the corporate resolutions. The district court heard the motion and still had it under advisement when the RTC gained control of the Debtors.

Once the RTC gained control it did not seek to dismiss the bankruptcy petitions, but proceeded with the bankruptcy action and actually placed another Bank subsidiary into bankruptcy. The RTC did, however, move to

withdraw the Reimbursement Motion, but the district court refused because the motion had already been heard.

The district court initially granted the reimbursement motion, finding in a May 27, 1994 order "that the evidence demonstrates that the officers and directors of the Debtor companies sought the protection of the bankruptcy court in good faith." Appendix C. Subsequently, on October 5, 1994 the court clarified its earlier order, holding that Petitioners should be indemnified "if and when [they] prove by a preponderance of the evidence that they have incurred reasonable expenses in defending themselves for actions taken in good faith with the reasonable belief that such actions were not opposed to the best interests of the Debtor companies." Appendix F. This appeal ensued before the district court ever ordered actual reimbursement to the Petitioners.

The Fourth Circuit reversed the district court's reimbursement orders. The Court of Appeals agreed that under the applicable state corporate codes a corporate agent is entitled to indemnification for costs incurred in defending himself against legal charges if he "could have acted in good faith and in the best interests of the corporation if the charges against the agent turn out to be true." 76 F.3d at 563. Appendix A. The court held, however, "We cannot conclude that the [Petitioners'] action was taken in good faith. If the OTS charges are accurate, the [Petitioners'] action to place the Debtors in bankruptcy was a deliberate attempt to prevent the OTS from exercising control over the Bank's assets, thus hindering the OTS's ability to deal effectively with a failing savings and loan." *Id.* at 565. "We recognize that the [Petitioners] did not break any law by filing the bankruptcy petitions,

and that the OTS has not filed criminal charges against the [Petitioners]. Nonetheless, we find that a deliberate attempt to undermine the regulatory authority of a government agency cannot constitute good faith conduct, even if such actions benefit the corporation." *Id.*

The Court of Appeals denied as untimely Petitioners' Petition for Rehearing and Suggestion for Rehearing en Banc, and also denied their motion for reconsideration of the Petition. Appendix D and Appendix E.

The United States District Court for the District of South Carolina had jurisdiction of the underlying bankruptcy matter pursuant to 28 U.S.C. § 1334. The Court of Appeals for the Fourth Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291.

V. REASONS FOR GRANTING THE PETITION

This case presents an important opportunity for the Court to correct the Court of Appeals' application of FIRREA that broadly preempts not only state-created rights but federal-law rights under the Bankruptcy Act. By finding Petitioners guilty of bad faith under the facts of this case the Court of Appeals has laid out a bright line rule which prohibits any resistance, no matter how measured or how well justified, to a takeover action by the OTS.

The facts of this case make it an ideal vehicle by which to clarify the limits of FIRREA because of the extreme nature of the Court of Appeals' interpretation of FIRREA. The Debtor corporations were subsidiaries of the Bank that was the subject of OTS investigation and

that was signatory to the Consent Agreement not to engage in material transactions without OTS consent. Neither the district court nor the Court of Appeals engaged in any analysis of the Bank-OTS agreement to determine whether the agreement was even intended to – let alone able to – preclude Bank subsidiaries from filing for bankruptcy. Though supportive of filing for bankruptcy, Petitioners personally abstained from the corporate votes both to declare bankruptcy and to indemnify them for their legal defense costs. The district court found, and the Court of Appeals did not disagree, that the federal regulators were hampering the Petitioners' legitimate efforts to reorganize the companies and that Petitioners sought the protection of the bankruptcy court to protect themselves from an "overrun bureaucracy". 76 F.3d at 564. The filing for bankruptcy was not only legal and in fact specifically provided for by federal bankruptcy law, but was ratified by the RTC once it seized control of the Debtors, and the bankruptcy was spectacularly successful, resulting in all unsecured creditors being paid in full.

Despite these facts the Court of Appeals did not so much as remand the reimbursement claim for an evidentiary hearing or even hold the reimbursement claim in abeyance pending resolution of the OTS civil administrative proceedings. Instead, the Court of Appeals summarily declared the filing for bankruptcy to be the legal equivalent of a deliberate criminal act, preclusive *per se* of a finding of good faith.

This case thus starkly presents the question whether FIRREA confers such broad and preemptive authority upon the OTS that resistance by any means, even by

means specifically sanctioned by the Bankruptcy Act, is illegal. The Court of Appeals succinctly summarized its guiding principle as follows: "[w]e recognize that the [Petitioners] did not break any law by filing the bankruptcy petitions, and that the OTS has not filed criminal charges against the [Petitioners]. Nonetheless, we find that a deliberate attempt to undermine the regulatory authority of a government agency cannot constitute good faith conduct, even if such actions benefit the corporation." 76 F.3d at 565. Neither the case law nor the record in this case supports such facile overwriting of the Bankruptcy Code. In *O'Melveny & Myers v. FDIC*, ___ U.S. ___, 114 S. Ct. 2048 (1994), the Court granted certiorari in order to decide that FIRREA did not require that federal common law supplant state tort law in an action brought by the FDIC against a bank attorney. We believe that the issue presented in this case is equally if not more worthy of review by the Court.

The Court of Appeals appears to have concluded, without engaging in the formality of taking evidence on the issue, that Petitioners breached the agreement between the Bank and the OTS that prohibited the Bank and its subsidiaries from engaging in "material transactions" without OTS consent. The court evinced no interest in the fact that, though Petitioners signed the agreement, they clearly did so as directors of the Bank, not as directors of the Debtors, or of the fact that Petitioners abstained from the Debtors' votes to file for bankruptcy. Perhaps of even more significance, the Court of Appeals did not examine the question whether the agreement was even intended to – let alone legally could – prevent Debtors from filing for bankruptcy. That comprehensive,

twelve-page agreement makes no mention at all of bankruptcy. Rather, it prohibits the Bank and its subsidiaries from engaging in "material transactions" without OTS consent. Both in common usage and in the context in which it appears in the agreement, "transaction" connotes a transitive action between two or more persons, not a unilateral action whereby one person submits himself to the protection of the bankruptcy court. That the Court of Appeals found unnecessary any factual inquiry into whether Petitioners had actually breached the standstill agreement with the OTS is testament to the breadth and depth of obeisance that the OTS commands under the court's holding in this case.

The Court of Appeals' holding with regard to the effect of a "breach" of the Bank-OTS standstill agreement sets up a patent conflict between FIRREA and the Bankruptcy Act, and in resolving this conflict in favor of eviscerating rights created under the Bankruptcy Act the court has departed from heretofore virtually universally accepted interpretation of the Act. The ability to seek the protection of the bankruptcy court is a statutory right which is generally held to be superior to any rights or obligations created by prior contractual agreements. It has long been held that an agreement to waive the benefits of bankruptcy is unenforceable. *In re Weitzen*, 3 F. Supp. 698 (S.D.N.Y. 1933). To sustain a contractual obligation of this character would frustrate the object of the Bankruptcy Act. *Id*. The purpose of the Bankruptcy Act is a strong legislative desire that deserving debtors be allowed to get a fresh start. *Fallick v. Kehr*, 369 F.2d 899, 904 (2d Cir. 1966). "It is well settled principle that an advanced agreement to waive benefits conferred by the

bankruptcy laws is wholly void against public policy." *In re Tru Block Concrete Products, Inc.*, 27 B.R. 486, 492 (S.D. Cal. 1983). *See In re Kriger*, 2 B.R. 19, 23 (Bankr.D. Or. 1979); *In re George*, 15 B.R. 247, 248-249 (Bankr.N.D. Ohio 1981) (pre-bankruptcy waivers unenforceable because in conflict with the purposes of bankruptcy laws); *Fallick v Kehr*, 369 F.2d 899, 904 (2d Cir. 1966). The Court of Appeals' departure from this principle is all the more dramatic because the court equated the supposed breach of the standstill agreement to a deliberate criminal act. The corporate indemnification statutes clearly require that the corporate agent who is seeking indemnification must have acted in good faith vis-a-vis the corporation. The Court of Appeals transposed this requirement into one of good faith vis-a-vis the OTS, citing authorities that hold only that a corporate agent who has committed a deliberate criminal act cannot be indemnified. 76 F.3d at 565.

Nothing in corporate law or the Bankruptcy Act supports the view that government administrative enforcement actions are as sacrosanct as the Court of Appeals has held them to be. There is no evidence that in enacting FIRREA Congress intended to divest the bankruptcy courts of jurisdiction to adjudicate matters merely because they fall within the reach of government regulators. *In re All Season's Kitchen, Inc.*, 145 B.R. 391, 397 (Bankr. D. Vt. 1992). To the contrary, the Bankruptcy Reform Act of 1994[1] made explicit Congress' intent that there be a broad waiver of the government's immunity

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[1] The section of the Act amending § 106 applies retroactively. Pub. L. No. 103-394.

both to monetary recoveries and to declaratory and injunctive relief. 2 Collier on Bankruptcy para. 106.01. *Compare McAvoy v. United States*, 178 F.2d 353 (2d Cir. 1949) (holding prior to the amendment of 11 U.S.C. § 106 (1994) that the bankruptcy court could not enjoin the Small Business Administration from intervening in a non-bankruptcy proceeding wherein the valuation of the government's claim might be determined). Thus, Congress has empowered the bankruptcy courts to adjudicate disputes between corporations and government agencies. It necessarily follows that it should not be regarded as bad faith *per se* for a corporation to seek the protection of the bankruptcy courts merely because doing so frustrates the regulatory authority of a government agency. Filing for bankruptcy almost always frustrates someone's legitimate business objectives, but even a contrived bankruptcy filing is not necessarily bad faith. *See Merchants and Mechanics Federal Savings and Loan Association v. Lewis*, 25 B.R. 422 (Bankr. S.D. Oh. 1982). Nothing in FIRREA purports to exempt the OTS from the Bankruptcy Act.

The implications of the Court of Appeals' holding in this case are staggering. Under this holding there can be no resistance to an OTS attack except through supplication to the OTS itself, no matter how well justified or how carefully measured such resistance may be. Any director or other agent who, on behalf of his company, resists the OTS in any way is likely to be deemed to have "undermine[d] the regulatory authority of a government agency" and thereby be barred from obtaining indemnification from the company that he sought to defend. A corporate director whose company is threatened by the OTS (or, perhaps, by any government agency) can ill

afford to make a difficult decision in defense of his company when the price of making the wrong decision is personal financial ruin. He is forced to choose between what is best for his company and what is safest for him personally. The good faith provision in the corporate indemnification statutes was intended to save corporate agents from just this Hobson's choice and, by extension, to save corporations from suffering the inevitably unfortunate consequences of such choices. Neither FIRREA nor any other regulatory scheme should be construed to paralyze all resistance by a corporation to governmental intrusion. Likewise, they should not be interpreted to override the congressional mandate that a debtor be allowed to seek reorganization under the Bankruptcy Act.

VI. CONCLUSION

For the foregoing reasons, Gerald G. Barton, William W. Vaughan, III and Joe W. Walser respectfully request that this petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit be granted and the case be set for plenary review.

Respectfully submitted,

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Dated: May 14, 1996

United States Court of Appeals
for the Fourth Circuit

In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al, Debtors.

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al, Debtors-Appellants,

Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellant,

v.

D. Scott CONE; John Wilson Reed, Respondents-Appellees,

Bernard G. Ille, et al, Claimants-Appellees,

Jones, Day, Reavis & Pogue; McGlinchey, Stafford & Lang; McNair & Sanford, P.A., Parties in Interest-Appellees,

Alpha Nursery, Incorporated, et al, Creditors,

88314 Ontario Limited, et al, Claimants,

Bureau of Indian Affairs, et al, Respondents,

US Trustee, Trustee.

In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al, Debtors.

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al, Debtors-Appellees,

Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellee,

v.

Gerald G. BARTON, et al, Claimants-Appellants,
Jones, Day, Reavis & Pogue; McGlinchey, Stafford & Lang; McNair & Sanford, P.A., Parties in Interest,
Alpha Nursery, Incorporated, et al, Creditors,
88314 Ontario Limited, et al, Claimants,
Bureau of Indian Affairs, et al, Respondents,
US Trustee, Trustee.
In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al, Debtors.
LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al, Debtors-Appellees,
Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellee,

v.

McNAIR & SANFORD, P.A., Party in Interest-Appellant,
Jones, Day, Reavis & Pogue; McGlinchey, Stafford & Lang, Parties in Interest,
Alpha Nursery, Incorporated, et al, Creditors,
88314 Ontario Limited, et al, Claimants,
Bureau of Indian Affairs, et al, Respondents,
US Trustee, Trustee.
In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al, Debtors.

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al,
Debtors-Appellees,
Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellee,
v.
McGLINCHEY, STAFFORD & LANG,
Party in Interest-Appellant,
Jones, Day, Reavis & Pogue; McNair & Sanford, P.A., Parties in Interest,
Alpha Nursery, Incorporated, et al,
Creditors,
88314 Ontario Limited, et al, Claimants,
Bureau of Indian Affairs, et al,
Respondents,
US Trustee, Trustee.
In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation,
et al, Debtors.
LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al,
Debtors-Appellees,
Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellee,
v.
JONES, DAY, REAVIS & POGUE, Party in Interest-Appellant,
McNair & Sanford, P.A.; McGlinchey, Stafford & Lang, Parties in Interest,
Alpha Nursery, Incorporated, et al,
Creditors,
88314 Ontario Limited, et al, Claimants,
Bureau of Indian Affairs, et al,
Respondents,

US Trustee, Trustee.
In re LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al, Debtors.
LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, etc., et al, Debtors-Appellants,
Resolution Trust Corporation, a receiver (formerly conservator) for Oak Tree Federal Savings Bank, Creditor-Appellant,
v.
D. Scott CONE; John Wilson Reed, Respondents-Appellees,
Bernard G. Ille, et al, Claimants-Appellees,
Jones, Day, Reavis & Pogue; McGlinchey, Stafford & Lang; McNair & Sanford, P.A., Parties in Interest-Appellees,
Alpha Nursery, Incorporated, et al, Creditors,
88314 Ontario Limited, et al, Claimants,
Bureau of Indian Affairs, et al, Respondents,
US Trustee, Trustee.
Nos. 94-2475, 94-2490 through 94-2493 and 94-2550.

United States Court of Appeals, Fourth Circuit.

Argued June 8, 1995.

Decided Feb. 15, 1996.

Appeals from the United States District Court for the District of South Carolina, at Charleston. Falcon B.

Hawkins, Chief District Judge. (CA-91-5287-2-1, CA-91-3287-2-1, BK-91-5814, CA-91-5386-2-1, CA-91-3286-2-1, BK-91-5815, CA-91-5291-2-1, CA-91-3291-2-1, BK-91-5816, CA-91-5290-2-1, CA-91-3290-2-1, BK-91-5817, CA-91-5289-2-1, CA-91-3289-2-1, BK-91-5819, CA-91-5288-2-1, CA-91-3288-2-1, BK-91-5818, CA-92-3548-2-1, BK-92-77109).

ARGUED: Henry Robbins Lord, Piper & Marbury, Baltimore, Maryland, for Appellants. John Wilson Reed, New Orleans, Louisiana; Patrick Michael Duffy, McNair & Sanford, P.A., Charleston, South Carolina, for Appellees. ON BRIEF: Stephen H. Kaufman, Piper & Marbury, Baltimore, Maryland; Nathan B. Feinstein, Daniel J. Carrigan, Timothy P. Branigan, Kimberly E. Wolod, Piper & Marbury, Washington, D.C.; Kevyn D. Orr, Resolution Trust Corporation, Washington, D.C., for Appellants. Richard L. Tapp, Jr., McNair & Sanford, P.A., Charleston, South Carolina; M. Dawes Cooke, Jr., Robert Gritton, Barnwell, Whaley & Stevenson, Charleston, South Carolina; Craig Caesar, Timothy Scott, McGlinchey, Stafford & Lang, New Orleans, Louisiana; Paul O'Hearn, R. Matthew Martin, Jones, Day, Reavis & Pogue, Atlanta, Georgia; Evan Park Howell, III, Metairie, Louisiana, for Appellees.

Before RUSSELL, NIEMEYER, and MICHAEL, Circuit Judges.

Affirmed in part and reversed in part by published opinion. Judge DONALD RUSSELL wrote the opinion, in which Judge NIEMEYER and Judge MICHAEL joined.

OPINION

DONALD RUSSELL, Circuit Judge:

This case comes before this Court at the twilight of the Debtors' bankruptcy proceedings. The Resolution Trust Corporation ("RTC") has already taken control of the Debtors and has liquidated their assets. The bankruptcy proceedings have proven to be successful, with the debtors-in-possession paying each claim in full. On this appeal, the second to this Court, we consider only whether the debtors' estates must indemnify several of the Debtors' former directors, officers, and employees for their costs in defending themselves against civil proceedings brought by the Office of Thrift Supervision ("OTS") in connection with the bankruptcy filings. The district court found that the Debtors' estates must indemnify these directors, officers, and employees for their defense costs. We affirm in part and reverse in part.

I.

A. The OTS Charges

On October 11, 1991, the Debtors (with one exception) filed for bankruptcy.[1] The Debtors were first- and

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[1] The Debtors are Landmark Land Company of Carolina, Inc. ("Landmark Carolina"), Landmark Land Company of Oklahoma, Inc. ("Landmark Oklahoma"), Landmark Land Company of Florida, Inc. ("Landmark Florida"), Landmark Land Company of Louisiana, Inc. ("Landmark Louisiana"), Landmark Land Company of California, Inc. ("Landmark California"), and Clock Tower Place Investments Ltd. ("Clock Tower"). Carmel Valley Ranch did not file for bankruptcy at this time and is not involved in this indemnification dispute.

second-tier subsidiaries of Oak Tree Savings Bank, S.S.B. ("Bank"). At the top of the corporate structure was Landmark Land Company, Inc. ("Landmark Land"), a publicly traded company. It was a holding company and whole owner of the Bank, which was the whole owner of Clock Tower, which in turn was the holding company and whole owner of Landmark Carolina, Landmark Oklahoma, Landmark Florida, Landmark Louisiana, and Landmark California.

Gerald G. Barton and William W. Vaughan, III, were prominent figures in the Landmark corporations. Barton was the chairman of the board of directors of Landmark Land, the Bank, and all of the subsidiaries. He was also the chief executive officer of Landmark Land and the Bank, and a 29% shareholder of Landmark Land. Vaughan, Barton's son-in-law, was a director and officer of the Bank and most of the subsidiaries. An attorney, he was the general counsel to the subsidiaries. Joe W. Walser played a less prominent role in the Landmark hierarchy, but he served as a director of the Bank and some of the subsidiaries. Bernard G. Ille served as a director of only the Bank, but he did not participate actively in the management of the Bank or the subsidiaries. He was employed by First Life Assurance Company, a subsidiary of Landmark Oklahoma.

Prior to the bankruptcy filings, the subsidiary companies invested profitably in real estate using the Bank's funds to finance their operations. They developed, owned, and managed residential resort communities, complete with golf courses, tennis courts, and polo facilities. During this time, the Bank loaned the subsidiaries more than $986 million.

The financial position of the Landmark organization eventually deteriorated. An OTS investigation on June 4, 1990 revealed that the Bank was undercapitalized and had demonstrated a pattern of consistent losses. Despite several attempts, the Bank was unable to submit to the OTS an acceptable plan for meeting the minimum capital requirements. On January 15, 1991, the directors of the Bank signed a Consent Agreement with the OTS in which they agreed that the Bank's subsidiaries would not enter into any material transaction without prior approval from the OTS. The Consent Agreement indicated that the Bank was near failure and that an OTS takeover was imminent.

Despite the terms of the Consent Agreement, the subsidiaries filed for bankruptcy. Anticipating that the OTS would act quickly to take control of the Bank, the Debtors immediately sought and obtained from the bankruptcy court a temporary restraining order preventing the Bank from exercising its shareholder rights to remove and replace the management of the Debtors.

The bankruptcy filings did not receive a pleasant reception from the OTS. On October 13, 1991, as expected, the OTS took control of the Bank and appointed the Resolution Trust Corporation ("RTC") to act as receiver for the Bank.[2] See Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub.L. No.

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[2] The RTC then organized, and the OTS chartered, Oak Tree Federal Savings Bank, F.S.B. ("New Oak Tree"). Pursuant to a purchase and assumption agreement, New Oak Tree purchased all of the RTC's right, title and interest in Oak Tree's assets, including its wholly owned subsidiaries. The OTS then appointed the RTC as conservator for New Oak Tree.

101-73, 103 Stat. 183 (1989) (codified in scattered sections of 12 U.S.C.). More importantly, the OTS filed civil administrative charges against Barton, Vaughan, Walser, and Ille (collectively, the "Directors"). The OTS alleged that the Directors breached their fiduciary duties to the Bank because they knew that the bankruptcy filings would have a substantially adverse effect on the Bank's ability to collect on the secured and unsecured lines of credit to the Debtors. The OTS also charged the Directors with violating the terms of the Consent Agreement by having the Debtors enter into a material transaction – the filing for bankruptcy – without receiving OTS approval. The OTS assessed a fine of one million dollars against the Directors, and it fined Landmark Land $500,000 for each day it failed to seek dismissal of the bankruptcy proceedings. On November 18, 1991, the OTS amended its charges to add allegations that the Directors had mishandled certain large loans. The Directors hired attorneys to defend themselves against the OTS charges.

As the OTS continued its investigation into the Bank's affairs, several members of the Bank's accounting department became subjects of investigation. D. Scott Cone,[3] although he was an officer and director of Landmark Louisiana, headed the Bank's accounting department. Mohamed Motahari was a vice-president and the comptroller of the Bank. Gina Trapani was a vice-president, assistant comptroller, and tax manager of the Bank. Gary Braun was an accountant for the Bank.

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[3] Cone died during the course of this litigation and is represented by his estate.

Motahari, Trapani, and Braun became employees of Landmark Louisiana soon after the Debtors' filed for bankruptcy.

By March or April 1992, Cone, Motahari, Trapani, and Braun (collectively, the "Employees"), believing that the OTS might take action against them, retained counsel. On April 21, 1992, the OTS filed civil administrative charges against Cone and Motahari. The OTS alleged that, in monthly reports to federal regulators, they had misrepresented that the Debtors' debt to the Bank was secured, even though it was actually unsecured. The OTS never brought charges against Trapani or Braun.

B. The Reimbursement Motion

Although the RTC took control of the Bank, the original boards of directors remained in control of the Debtors until September 1992. Once the RTC was appointed conservator of the Bank, it immediately moved the district court to lift the temporary restraining order so that it could call a shareholders meeting and exercise its ownership rights over the Debtors. However, the district court, acting as the bankruptcy court, denied the RTC's motion and converted the temporary restraining order into a preliminary injunction. See Landmark Land Co. of Carolina v. Resolution Trust Corp. (In re Landmark Land Co. of Okla.), 134 B.R. 557 (D.S.C.1991), rev'd 973 F.2d 283 (4th Cir.1992). The RTC was not able to take control of the subsidiaries until this Court lifted the injunction on August 18, 1992. See In re Landmark Land Co. of Okla., 973 F.2d 283 (4th Cir.1992). On September 12, 1992, the

RTC took control of the Debtors, terminated the original boards of directors, and fired the Debtors' attorneys.

During the eleven-month interim when the original board controlled the Debtors, the Directors arranged for the Debtors to pay for the fees and costs of defending themselves against the OTS charges. On March 26, 1992, the Debtors filed a Reimbursement Motion requesting permission to fund the Directors' indemnification. After making the motion, several of the Debtors' boards of directors met to approve the indemnification.

On April 8, 1992, the board of directors for Landmark Oklahoma met to discuss and vote on indemnification for Walser and Ille. Landmark Oklahoma's board consisted of three members: Barton, Lowery Bea Roselle, and Bill D. Thompson. Only Roselle and Thompson were present, but the two constituted a quorum. They found that Walser and Ille "had acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of [Landmark Oklahoma]." Accordingly, the board voted in favor of indemnification.

On April 21, 1992, the board of directors for Clock Tower met to discuss and vote on indemnification for Barton and Vaughan. Clock Tower's board consisted of five members: Barton, Vaughan, Roselle, Thompson, and a fifth director. At the time of the meeting, the fifth director had resigned and had not yet been replaced. The other four members of the board were present, constituting a quorum. The board found that Barton and Vaughan "had acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of [Clock Tower]." Roselle and Thompson voted in favor of

indemnification, and Barton and Vaughan abstained from the vote.

Although the Employees were not included in the Reimbursement Motion, the board of directors for Landmark Louisiana met on April 21, 1992 to discuss and vote on indemnification for the Employees. Landmark Louisiana's board consisted of five members: Barton, Vaughan, Cone, Roselle, and Thompson. Cone was not present, but the other four directors constituted a quorum. The board found that the Employees had acted in good faith and in the best interests of Landmark Louisiana, and they voted unanimously to indemnify the Employees for their expenses. Barton and Vaughan participated in the vote.

On June 3, 1992, the district court held a hearing on the Reimbursement Motion. The court did not rule on the motion at the time, and the motion remained dormant for almost two years.

On August 27, 1992, the Debtors amended their Reimbursement Motion to include the Employees' legal expenses. Even before this formal application, however, the Debtors had already begun indemnifying the Employees. In March 1992, Clock Tower paid $21,825 toward Motahari's legal expenses, and Landmark Louisiana paid $1,000 toward Braun's expenses. In June 1992, Clock Tower paid $35,398.48 toward Cone's, Motahari's, and Trapani's legal expenses. Thus, Clock Tower paid more than $57,000 toward the Employees' legal expenses, even though its board never voted to indemnify them. In total, the Debtors have paid $122,493.20 of the Employees' legal expenses.

C. The RTC-controlled Debtors

The RTC took control of the Debtors on September 12, 1992, and replaced the boards of directors. On November 5, 1992, the RTC-controlled Debtors sought, by means of a consent order, to withdraw the Reimbursement Motion. The district court denied the withdrawal because it had already heard argument on the motion and had taken the motion under advisement. The district court also recognized that the beneficiaries of the Reimbursement Motion – namely, the Directors and the Employees – were not represented in the proposed consent order.

The RTC, once it took control of the Debtors, decided that it was advantageous to operate the Debtors in bankruptcy and chose not to withdraw the Debtors from the bankruptcy proceedings. The RTC even decided to place another Bank subsidiary, Carmel Valley Ranch, in bankruptcy. The RTC filed a reorganization plan for the Debtors that was approved by the district court.

Meanwhile, the OTS settled its civil administrative actions against some of the Directors and Employees. On October 30, 1992, the OTS dropped its charges against Cone and Motahari in exchange for their consent to orders (1) prohibiting them from participating in the affairs of any insured depository institution and (2) debarring them from practicing before the OTS. Although Cone and Motahari accepted prohibition and debarment, neither admitted, and both specifically disputed, the OTS charges.

On April 1, 1993, the OTS dropped the charges against Ille with only the mildest rebuke: Ille had to sign

a cease and desist order, prohibiting him from engaging in unsafe and unsound banking practices and from breaching fiduciary duties to a federally insured depository institution. In other words, Ille agreed to follow diligently in the future the standard of conduct already required of him. Ille received this lenient treatment because he did not participate in the bankruptcy filings. He learned of the decision to place the Debtors in bankruptcy during a telephone call from Barton on the evening of October 10, 1991, the day before the bankruptcy filings; that same evening, he resigned from his position as a director of the Bank. At most, Ille failed only to follow the affairs of the Bank more diligently.

As of the date of this opinion, the OTS proceedings against Barton, Vaughan, and Walser remain unresolved.

D. The District Court's Orders

On May 27, 1994, more than two years after the filing of the motion, the district court granted the Reimbursement Motion. The district court found that "the evidence demonstrates that the officers and directors of the Debtor companies sought the protection of the bankruptcy court in good faith." In re Landmark Land Co. of Okla., Civ. Action No. 2:91-5286-1, order at 12 (D.S.C. May 27, 1994) (J.A. 1278). It also concluded that the RTC-controlled Debtors "ratified the decision to reorganize under the protection of the bankruptcy court, demonstrating that the placement of the Debtors into bankruptcy is reasonably viewed as being in the best interests of the Debtors." Id. Thus, the district court ordered the Debtors' estates to indemnify the Directors and Employees for their defense

costs, and it granted the applications for payment from the Employees' attorneys.

The RTC-controlled Debtors filed a motion for reconsideration on June 6, 1994. When the Debtors filed this motion, the following parties moved to intervene:

1. the Directors;

2. McNair & Sanford, P.A. ("McNair"), the attorneys for the Debtors before the RTC took control;

3. Jones, Day, Reavis & Pogue ("Jones Day") and McGlinchey, Stafford & Lang ("McGlinchey"), the Directors' former OTS defense attorneys;

4. John W. Reed (of Glass & Reed), attorney for Cone; David Popper (of Popper & Popper), attorney for Motahari; Herbert V. Larson, Jr., attorney for Motahari; Robert H. Habans, attorney for Trapani; and William R. Campbell, Jr., attorney for Braun.

The district court granted their motions to intervene on August 31, 1994. The Employees themselves did not move to intervene.

On October 5, 1994, the district court denied the Debtors' motion for reconsideration with respect to the indemnification of the Directors. The district court did, however, grant the motion for reconsideration with respect to the applications of the Employees' attorneys. In a separate order on November 9, 1994, the district court approved the applications for payment from the Employees' attorneys.

The RTC and the RTC-controlled Debtors appeal from the district court's orders.

II.

The RTC and the RTC-controlled Debtors raise a host of arguments challenging the district court's granting of the Reimbursement Motion. Rather than addressing all of their arguments, we address the issue most troubling to us about the district court's decision: the district court's finding that the Directors acted in good faith and in the best interests of the Debtors. We conclude that the district court clearly erred in finding that the Directors, with the exception of Ille, acted in good faith.[4]

A.

California, Oklahoma, and Louisiana have similar statutes regarding the indemnification of officers and

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[4] At least one court has held that the good faith determination is a question of fact reviewed under a clearly erroneous standard. Plate v. Sun-Diamond Growers of Calif., 225 Cal.App.3d 1115, 275 Cal.Rptr. 667, 672 (1990) (holding that the "question of whether a corporate agent . . . acted in good faith and for the best interests of the corporation[ ] appears to be an essentially factual question for the trial court"). The good faith determination strikes us as a question of law, or at least a mixed question of law and fact; although the facts supporting the good faith determination should be reviewed for clear error, an appellate court should review de novo whether or not those facts lead to the conclusion that the agent acted in good faith. Nonetheless, we need not at this time decide the appropriate standard of review for the good faith determination because our reasoning applies under either standard.

directors for the costs and expenses of legal proceedings.[5] Under the California statute (as well as the other statutes), indemnification is mandatory if a corporate agent successfully defends himself in any proceeding. In such a case, the corporation has a duty to indemnify the agent for his costs and expenses, and the agent can sue the corporation if it fails to do so.

Even where the litigation does not result in a complete vindication for the agent, "[a] corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding . . . if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation. . . . " Cal.Corp.Code § 317(b). Thus, the statute allows for indemnification even where the agent was negligent or committed some error, as long as the agent acted in good faith and in the best interests of the corporation. Plate v. Sun-Diamond Growers of Calif., 225 Cal.App.3d 1115, 275 Cal.Rptr. 667, 672 (1990). In such circumstances, indemnification is only permissive: the corporation does not have a duty to indemnify the agent but simply has the option to indemnify as long as the good faith requirement is satisfied.

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[5] California law applies to Barton and Vaughan, Oklahoma law to Walser and Ille, and Louisiana law to the Employees. Because the indemnification statutes are substantially similar, compare Cal.Corp.Code § 317 with Okla.Stat. tit. 18, § 1031 and La.Rev.Stat.Ann. § 12:83, we focus on the California statute for purposes of this discussion.

Indemnification is never allowed where the agent acted in bad faith and against the best interests of the corporation. As one California court has stated:

> Indemnification, if permitted too broadly, may violate . . . basic tenets of public policy. It is inappropriate to permit management to use corporate funds to avoid the consequences of wrongful conduct or conduct involving bad faith. A director, officer, or employee who acted wrongfully or in bad faith should not expect to receive assistance from the corporation for legal or other expenses and should be required to satisfy not only any judgment entered against him but also expenses incurred in connection with the proceeding from his personal assets. Any other rule would tend to encourage socially undesirable conduct.

Plate, 275 Cal.Rptr. at 672 (citing 2 American Bar Assoc., Model Business Corp. Act Ann., introductory cmt. to chapter 8, at 1082 (3d ed. 1987 supp.)).[6]

Thus, there are two requirements for permissive indemnification under § 317(b): (1) the corporation must authorize the indemnification, and (2) the agent must have acted in good faith and in the best interests of the corporation. It is not clear, however, whether the good faith determination should be made by a court or by the corporation itself. Section 317(e) provides that, before a

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[6] The most recent supplement to the Model Business Corporation Act Annotated contains similar but slightly different language. See 2 American Bar Assoc., Model Business Corp. Act Ann., introductory cmt. to subchapter E of chapter 8, at 8-289 to 8-290 (3d ed. 1995 supp.).

corporation can authorize indemnification, the corporation must determine that the agent has acted in good faith and in the best interests of the corporation. The corporation can make this determination in any of the following ways:

> (1) A majority vote of a quorum consisting of directors who are not parties to such proceeding.
>
> (2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion.
>
> (3) Approval of the shareholders . . . , with the shares owned by the person to be indemnified not being entitled to vote thereon.[7]

Cal.Corp.Code § 317(e). At first glance, § 317(e) suggests that the corporation's finding of good faith settles the matter, and that the court's role is limited to ensuring that the corporation made its finding of good faith by proper procedures.

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[7] The California Code also provides a fourth way in which a corporation can determine that an agent has acted in good faith and in the best interests of the corporation: (4) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation. Cal.Corp.Code § 317(e)(4). This fourth option, which is not found in the Oklahoma or Louisiana statutes, is actually an exception. It provides that an agent can receive indemnification over the corporation's opposition if the court in the proceedings for which the agent seeks indemnification found that the agent acted in good faith and in the best interests of the corporation.

We do not agree that the court's role is so narrow. Although a corporation has to find that the agent acted in good faith before authorizing indemnification, nothing in § 317(e) restricts a court's authority under § 317(b) to make an independent assessment of the agent's good faith. Section 317(b) allows permissive indemnification where the agent has acted in good faith, not where the corporation finds that the agent has acted in good faith. Reading § 317(b) together with § 317(e), we conclude that the issue of an agent's good faith is a question for the courts to decide.

In making the good faith determination, however, a court cannot ignore the factual findings made during the underlying proceeding for which the agent seeks indemnification. If the court or administrative panel in the underlying litigation made factual findings relevant to the determination of the agent's good faith, the indemnification court cannot reevaluate the evidence and reach the opposite conclusion. Even the findings of an administrative agency have collateral estoppel effect on the indemnification court. As the Supreme Court has stated:

> When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.

United States v. Utah Construction & Mining Co., 384 U.S. 394, 422, 86 S.Ct. 1545, 1560, 16 L.Ed.2d 642 (1966).

Furthermore, where a court decides the question of indemnification before the completion of the underlying proceeding, the court must tread even more carefully. In

determining whether or not the agent acted in good faith and in the best interests of the corporation, the indemnification court should not make any factual or legal determinations that are properly before the court or administrative panel in the underlying proceeding. The indemnification court should not base its good faith determination on its own conclusions about the merits of the charges in the underlying proceeding.

The indemnification court, however, does not need to postpone its determination until after the completion of the underlying proceeding. The indemnification court should consider whether the agent could have acted in good faith and in the best interests of the corporation if the charges against the agent turn out to be true.[8] If the indemnification court finds that the agent could have acted in good faith even if the charges were true, it should grant indemnification because the indemnification determination is not contingent on the result of the underlying proceeding. On the other hand, if the indemnification court finds that the agent's alleged misconduct, if true, demonstrates that the agent acted in bad faith, the indemnification court should deny permissive indemnification; it should hold its indemnification decision in abeyance until the completion of the underlying proceedings and then grant indemnification only if the agent

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[8] The indemnification court does not need to consider the agent's good faith if the charges turn out to be false. If the agent succeeds on the merits in the underlying proceeding, he is entitled to mandatory indemnification. See Cal.Corp.Code § 317(d). In such a situation, the issue of permissive indemnification would be moot, thus rendering the good faith determination unnecessary.

succeeds on the merits. For instance, an agent defending himself against charges of negligent conduct should receive indemnification if the indemnification court finds that the agent, even if he were negligent, acted in good faith. However, an agent defending himself against charges of intentionally wrongful conduct should receive indemnification only if he succeeds on the merits.

In the instant case, it is not clear whether the district court – the indemnification court in this case – recognized the proper scope of its "good faith" determination. In finding that the Directors acted in good faith and in the best interest of the Debtors when they filed the petitions for bankruptcy, the district court offered little explanation on how it reached its finding. In its May 27, 1994 order, it simply stated:

> [T]his court finds that the evidence demonstrates that the officers and directors of the Debtor companies sought the protection of the bankruptcy court in good faith. Further this court finds that the Debtors' new management ratified the decision to reorganize under the protection of the bankruptcy court, demonstrating that the placement of the Debtors into bankruptcy is reasonably viewed as being in the best interest of the Debtors.

In re Landmark Land Co. of Okla., Civ. Action No. 2:91-5286-1, order at 12 (D.S.C. May 27, 1994) (J.A. 1278). Neither in this order nor in any of its subsequent orders did the district court articulate how the evidence demonstrated the Directors' good faith. More importantly, the district court did not explain how the Directors could

have acted in good faith if the OTS charges filed against them were true.

Apparently, the district court's finding of the Directors' good faith stems from its belief that the OTS charges had no merit. From the very beginning of the bankruptcy proceedings, the district court found that the Directors "possesse[d] the requisite expertise to continue managing the debtors' estates in a manner most profitable for the preservation of corporate assets." Landmark Land Co. of Carolina v. Resolution Trust Corp. (In re Landmark Land Co. of Okla., 134 B.R. 557, 560 (D.S.C.1991), rev'd 973 F.2d 283 (4th Cir.1992)). It found that "the RTC ha[d] acted with complete disregard of the efforts of management to keep the debtor companies afloat." Id. It seems that the district court believed that federal regulators were hampering the Directors' legitimate efforts to reorganize the companies, and that the Directors sought the protection of the bankruptcy code to protect themselves from an overrun bureaucracy. The district court thought little of the OTS charges, referring to them as an attempt by the OTS to "seek[ ] atonement from the named Debtor officers for placing the Debtor companies in bankruptcy." In re Landmark Land Co. of Okla., Civ. Action No. 2:91-5286-1, order at 8 (D.S.C. Oct. 5, 1994) (J.A. 2452). Furthermore, it found that the Directors had the best interests of the Debtors in mind when they filed for bankruptcy because the RTC ratified the Directors' action by keeping the Debtors in bankruptcy once it obtained control over them.

Even if the district court was correct that the OTS was inept and overbearing, the Directors' action to file for bankruptcy was a deliberate attempt to circumvent

the regulatory authority that Congress had clearly given to the OTS. Congress created the OTS in 1989 in response to the crisis in the savings and loan industry, which occurred when the insolvency of a large number of savings and loans bankrupted the Federal Savings and Loan Insurance Corporation. Although the majority of savings and loans were healthy financial institutions, Congress found that the thrift crisis was concentrated in the roughly twenty-five percent of the industry having capital, measured under generally accepted accounting principles, of less than three percent. H.R.Rep. No. 101-54(I), 101st Cong., 1st Sess. 303 (1989), reprinted in 1989 U.S.C.C.A.N. 86, 99. Congress found that, "[t]o a considerable extent, the size of the thrift crisis resulted from the utilization of capital gimmicks that masked the inadequate capitalization of thrifts. . . . [I]f a crisis of this nature is to be prevented from happening again, thrifts must be adequately capitalized against losses." H.R.Rep. No. 101-54(I), 101st Cong., 1st Sess. 310 (1989), reprinted in 1989 U.S.C.C.A.N. 86, 106. Congress invested the OTS with broad regulatory powers to oversee financial institutions and ensure that they were adequately capitalized.

By placing the Debtors in bankruptcy, the Directors intended to prevent the OTS from enforcing the minimum capitalization requirement against the Bank. According to the OTS charges, the OTS investigated the Bank on June 4, 1990 and found that the Bank was inadequately capitalized and had demonstrated a pattern of repeated losses. The OTS directed the Bank to infuse sufficient capital to meet the minimum capitalization requirement, but the Bank did not submit an acceptable plan. Because of the Bank's inability to meet the requirement, the OTS

forced the Bank directors to sign a Consent Agreement on January 15, 1991, signalling to the Directors that an OTS takeover was imminent. Instead of working with the OTS to correct the Bank's capitalization problem, the Directors filed the bankruptcy petitions to prevent the OTS from exercising control of the Bank's subsidiaries.

We cannot conclude that the Directors' action was taken in good faith. If the OTS charges are accurate, the Director's action to place the Debtors in bankruptcy was a deliberate attempt to prevent the OTS from exercising control over the Bank's assets, thus hindering the OTS's ability to deal effectively with a failing savings and loan. Despite the district court's findings that the federal regulators had interfered with the Directors' efforts to keep the Debtors afloat, the fact remains that the Bank could not comply with the minimum capitalization requirement, and the OTS therefore had a statutory duty to force the Bank's management to comply with the capitalization requirement. The Directors acknowledged the OTS's regulatory authority when they signed the Consent Agreement and agreed that the Bank's subsidiaries would not enter into any material transaction without prior approval from the OTS. When the OTS threatened to take control of the Bank, however, the Directors' used the bankruptcy code to stymie the OTS, even though their action breached the Consent Agreement with the OTS and violated their fiduciary duties to the Bank. We cannot condone the Directors' blatant attempt to circumvent the OTS's regulatory authority by holding that they acted in good faith.

Even if the bankruptcy filings benefitted the Debtors, we still could not conclude that the Directors acted in

good faith. An agent who has intentionally participated in illegal activity or wrongful conduct against third persons cannot be said to have acted in good faith, even if the conduct benefits the corporation. Plate, 275 Cal.Rptr. at 672. "For example, corporate executives who participate in a deliberate price-fixing conspiracy with competing firms could not be found to have acted in good faith, even though they may have reasonably believed that a deliberate flouting of the antitrust laws would increase the profits of the corporation." 1 Harold Marsh, Jr. and R. Roy Finkle, Marsh's California Corporation Law (3d ed.) § 10.43, at 751; see Plate, 275 Cal.Rptr. at 672 (citing same language from second edition). We recognize that the Directors did not break any law by filing the bankruptcy petitions, and that the OTS has not filed criminal charges against the Directors. Nonetheless, we find that a deliberate attempt to undermine the regulatory authority of a government agency cannot constitute good faith conduct, even if such actions benefit the corporation.

The Directors intentionally breached their fiduciary duties to the Bank and their Consent Agreement with the OTS in order to prevent the OTS from exercising the powers granted to it under FIRREA. The Directors knew the impropriety of their actions, and one of the Directors – Ille – resigned his position when he learned of the scheme. We therefore conclude that the Directors did not act in good faith when they placed the Debtors in bankruptcy.

B.

We do not reach the same conclusion with respect to Ille. Because the OTS and Ille entered into a settlement

and the OTS has dropped its charges against Ille, we have the benefit of the factual admissions contained in the settlement agreement. That agreement confirms that Ille had no part in the filing of the bankruptcy petitions. He learned of the decision to place the Debtors in bankruptcy on the evening of October 10, 1991, the day before the bankruptcy filings. Ille resigned his directorship later that same evening. In the settlement agreement, Ille admitted knowing of numerous serious underwriting deficiencies on loans approved by the Bank, and that he relied on representations by the Bank's management that these deficiencies were being addressed instead of his independently investigating the deficiencies known to him. At most, Ille failed only in his duties to follow the affairs of the Bank more diligently. The OTS, recognizing Ille's minimal participation, dropped the charges against him with only a mild punishment: it required Ille to sign a cease and desist order prohibiting him, in effect, from his breaching fiduciary duties in the future.

The terms of Ille's settlement agreement informs our decision regarding whether Ille acted in good faith and in the best interests of the corporation. The settlement agreement confirms that Ille committed no intentional wrongful act. Most importantly, upon realizing that the other Directors had schemed to circumvent the OTS's authority by placing the Debtors into bankruptcy, he immediately resigned from his position as a Bank director. We find that Ille acted in good faith and in the best interests of the Debtors.

We conclude, however, that Ille cannot receive indemnification from Landmark Oklahoma because he was not an agent of that corporation. Ille was not a

member of the boards of directors of Landmark Oklahoma or any of the Bank's other subsidiaries. He was a director only of the Bank, and as the settlement agreement shows, he was not an active participant in the management of either the Bank or the subsidiaries. Ille's only connection to Landmark Oklahoma is that he was employed by First Life Assurance Company ("First Life"), a subsidiary of Landmark Oklahoma. His employment status, however, does not make him an agent of Landmark Oklahoma, especially because First Life has no involvement whatsoever in the bankruptcy filings or this litigation. Because Ille was not an agent of Landmark Oklahoma, he would have to seek indemnification from the Bank. Hence, Ille is not entitled to indemnification from Landmark Oklahoma.

Although Ille has not sought indemnification from the Bank, we note that, under Louisiana law, Ille would likely be entitled to mandatory indemnification from the Bank.[9] The Louisiana indemnification statute provides for mandatory indemnification of an agent to the extent that he "has been successful on the merits or otherwise in defense" of the OTS charges. La.Rev.Stat.Ann. § 12:83(B). Ille never received an adjudication on the merits, but courts in other jurisdictions have interpreted similar language to require indemnification when a settlement agreement demonstrates that the agent succeeded on the merits. See Wisener v. Air Express Int'l Corp., 583 F.2d 579, 583 (2d Cir.1978) (holding, under Illinois law, that the phrase "on the merits or otherwise" is "surely . . . broad

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[9] The Louisiana indemnification statute would apply to the Bank because it was chartered under Louisiana law.

enough to cover a termination of claims by agreement without any payment or assumption of liability."); Waltuch v. Conticommodity Servs. Inc., 833 F.Supp. 302, 310-11 (S.D.N.Y.1993) (following Wisener in interpreting Delaware law, although ultimately concluding that plaintiff was not successful on merits); B & B Investment Club v. Kleinert's, Inc., 472 F.Supp. 787, 790-91 (E.D.Pa.1979) (interpreting Pennsylvania law). But see American Nat'l Bank & Trust Co. of Eau Claire, Wis. v. Schigur, 83 Cal.App.3d 790, 148 Cal.Rptr. 116, 117-18 (1978) (holding, under California law, that mandatory indemnification requires a judicial determination of the merits of the agent's defense).[10] The settlement agreement strongly suggests that Ille successfully defended himself against the OTS charges. Nevertheless, we cannot reach the issue of mandatory indemnification because the Bank is not a

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[10] The reasoning of the California court in American Nat'l Bank & Trust does not apply to Louisiana law. The mandatory indemnification provision in most states follows the language of the Model Business Corporations Act, which provides for mandatory indemnification of an agent who "has been successful on the merits or otherwise in defense" of any action. 1 Model Business Corporations Act Ann.2d § 5; see, e.g., La.Rev.Stat.Ann. § 12:83(B). The California statute, however, does not include the words "or otherwise," suggesting "a legislative intent that mandatory indemnification should depend upon a judicial determination of the actual merits of the agent's defense. . . . " American Nat'l Bank & Trust, 148 Cal.Rptr. at 118. Therefore, the American Nat'l Bank & Trust court's interpretation of California law has no bearing on Louisiana law.

defendant and has not had an opportunity to argue against mandatory indemnification.[11]

III.

We next consider the district court's finding that the Employees acted in good faith and in the best interests of the Debtors. The district court found that:

> There is no evidence before this court that the employees had any reason to believe that their efforts in taking the company into bankruptcy were opposed to the best interests of the corporation. While Cone and Motahari were investigated for criminal conduct and the OTS brought administrative charges for breach of fiduciary duty against them, they were never found guilty of any charge. Braun and Trapani were never even named in any administrative or criminal proceeding. They were only questioned concerning actions taken in the discharge of their duties of employment.

In re Landmark Land Co. of Okla., Civ. Action No. 2:91-5286-1, order at 5 (D.S.C. Nov. 9, 1994) (J.A. 2518) (footnote omitted). We find the district court's reasoning to be somewhat illogical. The Employees had no involvement in the Directors' decision to take the subsidiaries into bankruptcy. The OTS investigated the Employees to

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[11] We note that Ille has not paid any portion of his defense costs. In his deposition of April 9, 1992, he testified that the Directors' attorneys represented him in defense of the OTS charges. Because his position was different from the other three Directors, he hired a personal attorney. He never received the bills from this attorney, who was paid by Barton. See J.A. 259-60.

determine whether, in conducting the business of the Bank, they participated in unsafe and unsound business practices or violated banking laws and regulations. The charges brought against Cone and Motahari focused on their representations to federal regulators that the Debtors owed to the Bank over $950 million in secured debt, when in fact the debt was unsecured. The government has never alleged that any of the Employees participated in the decision to place the Debtors into bankruptcy.

We therefore conclude that the district court's holding that the Employees acted in good faith and in the best interests of the Debtors was clearly erroneous, at least with respect to Cone and Motahari. The OTS alleged that Cone and Motahari engaged in unsafe and unsound business practices by arranging for the Bank to loan over $950 million to its subsidiaries without securing the debt for the Bank. The OTS further alleged that they misrepresented to federal regulators that the loans were secured. Although Cone's and Motahari's settlement agreement stated that they continue to dispute the OTS charges against them, they accepted prohibition from practicing in the affairs of any insured depository institution and debarment from practicing before the OTS. In other words, the OTS kicked them out of the profession. Unlike the district court, which stated that the settlement agreement should not connote Cone's and Motahari's guilt, In re Landmark Land Co. of Okla., Civ. Action No. 2:91-5286-1, order at 5 n. 4 (D.S.C. Nov. 9, 1994) (J.A. 2518

n. 4), we conclude that their punishment is strong evidence that they acted in bad faith.[12]

With respect to Trapani and Braun, we see little evidence in the record on which to base a "good faith" determination, and therefore conclude that the district court's finding of good faith was clearly erroneous. Nonetheless, Trapani and Braun have a right to mandatory indemnification because they succeeded on the merits. Like Cone and Motahari, the OTS investigated Trapani and Braun for possible violations of banking statutes and regulations and for any participation in unsafe or unsound business practices. After this investigation, the OTS subpoenaed Trapani and Braun and made them give depositions under circumstances that were clearly adversarial. The OTS never filed any charges against Trapani and Braun. Under these circumstances, we conclude that they succeeded on the merits in their defense and are thus entitled to mandatory indemnification under La.Rev.Stat.Ann. § 12:83(B).

We therefore reverse the district court's granting of the Reimbursement Motion with respect to Cone and Motahari, and we affirm on different grounds the district court's granting of the motion with respect to Trapani and Braun.

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[12] We note that some of the subsidiaries have already indemnified Cone and Motahari for a substantial portion of their defense costs. The government represented at oral argument that it sought only prospective relief and that it was not demanding that Cone and Motahari repay the amounts already received.

IV.

We conclude that the district court erred in finding that Barton, Vaughan, Walser, Cone, and Motahari acted in good faith and in the best interests of the Debtors. Furthermore, we find that Ille, although he acted in good faith and in the best interests of the Bank, was not an agent of Landmark Oklahoma and could not receive indemnification from that entity. Therefore, we reverse the district court's granting of the Reimbursement Motion with respect to those parties. We conclude also that Trapani and Braun succeeded on the merits in their defense and were entitled to mandatory indemnification from their employer, Landmark Louisiana. We therefore affirm, on different grounds, the district court's granting of the Reimbursement Motion with respect to Trapani and Braun.

Because of the grounds upon which we base our conclusions, we need not reach the numerous other issues raised by the parties.[13]

AFFIRMED IN PART AND REVERSED IN PART.

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[13] We note that the appellees have filed a motion to dismiss this appeal. Because our decision in this case renders this motion moot, we take no action on the motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LANDMARK LAND COMPANY OF OKLAHOMA, INC. an Oklahoma Corporation, Debtor.	CIV. ACTION NO.2:91-5286-1 BANKRUPTCY CASE NO. 91-05815
IN RE: LANDMARK LAND COMPANY OF CAROLINA, INC. a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5287-1 BANKRUPTCY CASE NO. 91-05814
IN RE: CLOCK TOWER INVESTMENTS, LTD., a California Corporation, Debtor.	CIV. ACTION NO.2:91-5288-1 BANKRUPTCY CASE NO. 91-05818
IN RE: LANDMARK LAND COMPANY OF CALIFORNIA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5289-1 BANKRUPTCY CASE NO. 91-05819
IN RE: LANDMARK LAND COMPANY OF LOUISIANA, INC., a Louisiana Corporation, Debtor.	CIV. ACTION NO.2:91-5290-1 BANKRUPTCY CASE NO. 91-05817
IN RE: LANDMARK LAND COMPANY OF FLORIDA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-3291-1 BANKRUPTCY CASE NO. 91-05816
IN RE: CARMEL VALLEY RANCH, a California Corporation, Debtor.	CIV ACT. NO. 2:92-3548-1 BANKRUPTCY NO. 92-77109 Consolidated for Purposes of Joint Administration Only Under Chapter 11

(Filed Nov. 9, 1994)

ORDER ON APPLICATIONS AND FEES OF ATTORNEYS FOR DEBTOR EMPLOYEES

This matter is before the court on the Debtors' Motion To Reconsider the Court's May 27, 1994 Order which granted the applications of certain attorneys for payment of fees incurred in the representation of employees of the Debtors. This court severed reconsideration of these applications from the reconsideration of the portion of the May 27, 1994 Order which related to the indemnification of officers, directors and employees. By Order dated October 5, 1994, this court denied the Debtors request to reconsider the indemnification of the employees, officers and directors. At this time the court reconsiders the applications for nunc pro tunc employment and for payment of fees filed by William R. Campbell, Jr., Robert H. Habans, Jr., Herbert V. Larson, Jr., David Popper, and John Wilson Reed and the law firms of Popper & Popper and Glass & Reed.

The original Motion for Indemnification of officers and directors was filed in March of 1992 when Gerald Barton was the chief executive officer of the Debtors. In September of 1992, after the indemnification motion had been heard by the court, the Resolution Trust Corporation took over management of the Debtor companies and replaced The Board of Directors. The new Board attempted to withdraw the indemnification motion. However, as the court had already heard the motion, withdrawal was not permitted. Throughout the formation of the Plan of Reorganization the court considered the indemnification motion to be under advisement pending

resolution by order of the court. On May 27, 1994 the court ruled by granting the motion for indemnification as well as certain related applications. It is these applications that the court now reconsiders.

Landmark Land Company of Louisiana, Inc. resolved that the corporation would indemnify certain employees against all expenses, including attorneys fees, actually and reasonably incurred, in connection with a suit of action brought by a third party relating to actions taken in the discharge of their duties of employment.[1] Specifically, these employees were Gina Trapani, D. Scott Cone, Mohamad Motahari, and Gary Braun. Ms. Trapani[2] was an assistant to officers of the Debtor. Mr. Cone[3] was an officer of Debtors. Mr. Motahari and Mr. Braun were employed by the Debtor Landmark Land Company of Louisiana, Inc. These employees clearly incurred expense in defending themselves against charges brought in connection with their "doing their jobs."

In addition to the resolution of the Board of Directors to pay the legal expenses of the four individual employees, under applicable law, Debtors' officers, agents and employees are entitled to indemnification. This indemnification includes the reimbursement of legal fees, if it is determined that the party acted in good faith and in a manner reasonably believed to be in the best

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[1] See the Minutes of the April 21, 1992 Board of Directors Meeting.

[2] Ms. Trapini remained an employee of at least one of the Debtor corporations even after the management was replaced in the September of 1992.

[3] Mr. Cone is now deceased.

interest of the corporation. *See* Cal. Corp. Code, § 317(b) and Cal. Civ. Code § 2802; *See also* Del. Code Ann. tit. 8, § 145(a); Fla St. § 607.0850; La. Corp. Code, tit. 12, § 83; Tit. 18, Okla. Stat. § 1031; S.C. Code Ann. § 33-8-560.

Mr. Barton, the chief executive officer who managed the Debtors until the RTC took over, testified that the members of the Board of Directors who voted on the resolution to pay the legal expenses of the Debtors' agents did so in an effort to preserve the management that remained in place during the difficult period immediately following the filing of the bankruptcy petitions. Post-petition corporate stability is vitally important in a case such as this and certainly includes providing employees with the reassurance that the corporate decision to enter the reorganization process will not subject mid-level employees to the cost of protecting themselves in criminal or quasi-criminal investigations into the Debtors' activities.

Further the Debtors obtained the opinions of the law firm of Berman, Blanchard, Mausner & Kindem of Los Angeles California and of the law firm of Mock, Schwabe, Waldo, Elder, Reeves, & Bryant of Oklahoma City, Oklahoma. Both gave the Debtors their opinions that a corporation has an obligation to indemnify its agents and officers. There is a requirement that those agents acted in a manner "reasonably believed to be in or not opposed to the best interests of" the corporation and had no reasonable belief that their conduct was unlawful.

There is no evidence before this court that the employees had any reason to believe that their efforts in taking the company into bankruptcy were opposed to the

best interests of the corporation. While Cone and Motahari were investigated for criminal conduct and the OTS brought administrative charges for breach of fiduciary duty against them, they were never found guilty of any charges.[4] Braun and Trapini were never even named in any administrative or criminal proceeding. They were only questioned concerning actions taken in the discharge of their duties of employment.

Robert N. Habans, Jr. and his law firm, Habans, Bologna & Carrier have applied to this court for reimbursement for reasonable attorneys fees, cost and expenses incurred in representing Ms. Gina Trapani for the period from March 13, 1992 through September 12, 1992. Mr. John Wilson Reed and the law firm of Glass & Reed have applied to this court for reimbursement for reasonable attorneys fees, costs and expenses incurred in representing Mr. D. Scott Cone for the period from March 9, 1992 to September 12, 1992. Mr. David Popper has applied to this court for reimbursement for reasonable attorneys fees, costs and expenses incurred in representing Mr. Mamal(aka Mohamad) Motahari for the period from January 22, 1992 through June 10, 1992. Mr. Herbert V. Larson, Jr. has also applied to this court for reimbursement of reasonable attorney fees, costs and expenses incurred in representing Mr. Mohamad Motahari for the period from March 12, 1992 through September 12, 1992. Finally, Mr. William R. Campbell, Jr. has applied to this court for reimbursement for reasonable attorneys fees costs and expenses incurred for representing Mr. Gary Braun for

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[4] Both consented to certain prohibitions sought by the OTS, however such settlement should not connote guilt.

the period from March 14, 1992 through September 12, 1992. Mr. Braun filed a Motion on June 29, 1993, seeking court approval nunc pro tunc of his employment of Mr. Campbell as counsel.

Upon reconsideration of the applications of Campbell, Larson, Habans, Reed and Popper, and consideration of the objections to those applications, the court finds as it did in its May 27, 1994 Order that all are entitled to be paid for the reasonable Fees and Expense incurred in the representation of the named Debtors' employees. Additionally the court finds that such applications indicated reasonable fees and expenses.

Therefore, the court finds that the sums outstanding as described on pages 11 and 12 of the May 27, 1994 Order should be paid by Debtors' estates on behalf of the named individual employees.

Therefore, it is

ORDERED that the applications of Messrs. Habans, Campbell, Larson, Popper and Reed, and the law firms of Popper & Popper, and Glass & Reed for the payment of attorneys fees and costs be and hereby are approved.

ORDERED FURTHER, the motion of Gary Braun to employee counsel nunc pro tunc be and hereby is granted.

AND IT IS SO ORDERED.

/s/ Falcon B. Hawkins
Falcon B. Hawkins,
United States
District Judge

Charleston, South Carolina

November ___, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LANDMARK LAND COMPANY OF OKLAHOMA, INC. an Oklahoma Corporation, Debtor.	CIV. ACTION NO.2:91-5286-1 BANKRUPTCY CASE NO. 91-05815
IN RE: LANDMARK LAND COMPANY OF CAROLINA, INC. a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5287-1 BANKRUPTCY CASE NO. 91-05814
IN RE: CLOCK TOWER INVESTMENTS, LTD., a California Corporation, Debtor.	CIV. ACTION NO.2:91-5288-1 BANKRUPTCY CASE NO. 91-05818
IN RE: LANDMARK LAND COMPANY OF CALIFORNIA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5289-1 BANKRUPTCY CASE NO. 91-05819
IN RE: LANDMARK LAND COMPANY OF LOUISIANA, INC., a Louisiana Corporation, Debtor.	CIV. ACTION NO.2:91-5290-1 BANKRUPTCY CASE NO. 91-05817
IN RE: LANDMARK LAND COMPANY OF FLORIDA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-3291-1 BANKRUPTCY CASE NO. 91-05816
IN RE: CARMEL VALLEY RANCH, a California Corporation, Debtor.	CIV ACT. NO. 2:92-3548-1 BANKRUPTCY NO. 92-77109 Consolidated for Purposes of Joint Administration Only Under Chapter 11

ORDER ON ATTORNEYS FEES FOR DEBTOR EMPLOYEES AND DEBTOR OFFICERS AND DIRECTORS

(Filed May 27, 1994)

On March 26, 1992, the Debtors filed a Joint Motion for an order Authorizing Debtors to Reimburse Certain Costs of Defense Incurred By Officers, Directors and Employees in Administrative Proceedings. Debtors sought to reimburse certain Debtor personnel who were called upon to defend themselves against charges made in connection with the Debtors' decision to file for Chapter 11 protection. Specifically Debtors sought indemnification for Gerald G. Barton, Bernard G. Ille, William W. Vaughan, II, and Joe W. Walser, Jr. for the period that each were employed by Debtors, but prior to November 21, 1991, when the Office of Thrift Supervision amended its charges against the four named individuals. The Resolution Trust Corporation (RTC), acting as Conservator for Oak Tree Federal Savings Bank, filed opposition to Debtors' joint motion.

Hearing was held on the matter on June 3, 1992. At the conclusion of the hearing the Court ordered that the record remain open so that the parties could make post-hearing submissions of additional evidence and authority for their positions. Pursuant thereto, the Debtors filed additional evidence and authorities on June 8, 1992. The RTC responded to the Debtors' post-hearing submission by letter to the court, which was filed as a responsive pleading by the Clerk of Court.

On or about October 13, 1991, the Office of Thrift Supervision filed administrative charges against Messrs.

Barton, Ille, Vaughan, and Walser. Substantially the Notice of Charges stemmed the decision to place the Debtor corporations under the protection of the bankruptcy court. The OTS also issued a Temporary Order to Cease and Desist which, in relevant part, required the directors to "take all necessary steps to cause the withdrawal or dismissal of any and all bankruptcy petition (sic) or complaints filed . . . on or since October 9, 1991." The Notice of Charges against the directors was Amended on November 21, 1991. Evidence was presented of a document entitled AGREEMENT REGARDING CONFIDENTIAL INFORMATION by and between Federal Deposit Insurance Corporation, acting in its own behalf and as a manager of Resolution Trust Corporation and the Office of Thrift Supervision, dated April 29, 1991. The document memorialized the agreement between the two government agencies to exchange information gathered from Debtor employees in the bankruptcy and in the OTS administrative proceedings regarding the activities of the Debtors' officers, directors, and employees.

Sometime after the original administrative proceeding began, the Office of Thrift Supervision also filed a Notice of Charges against Mr. D. Scott Cone and Mr. Mohamad Motahari. As a result of the new charges, the Debtors filed a supplemental Motion on August 5, 1992, to be appended to their Joint Motion for the reimbursement of legal fees to include the payment of fees on behalf of Mr. Motahari and Mr. Cone.

Thereafter, the Office of the United States Attorney for the District of Louisiana instituted a federal grand jury investigation into the activities of the officers, directors, and employees of the Debtors. Four Debtor

employees, Messrs. Cone and Motahari, and Gary Braun and Gina Trapani, were all questioned in relation to the OTS charges and the grand jury investigation.

On August 7, 1992, Oak Tree Federal Savings Bank submitted a Motion to Compel Chapter 11 Debtors to Recover Attorneys fees and Expenses wrongfully paid from the Chapter 11 Debtors' Estates to Certain Individuals and Attorneys. Oak Trees submitted to the court, as an exhibit to its motion, a copy of the Minutes of Meeting of the Board of Directors of Landmark Land Company of Louisiana, Inc., dated April 21, 1992, in which the Board resolved that the corporation would indemnify employees Gary Braun, D. Scott Cone, Mohamad Motahari, and Gina Trapani against all expenses, including attorneys fees, actually and reasonably incurred, in connection with a suit or action brought by a third party relating to actions taken in the discharge of their duties of employment. The Official Landmark Unsecured Creditors' Committee and the Debtors each filed responses. Messrs. Habans, Campbell, Larson, Popper and Reed, and the law firms of Popper & Popper, and Glass & Reed, also filed opposition to Oak Tree's Motion to Compel.

In addition, Robert N. Habans, Jr. and his law firm, Habans, Bologna & Carrier have applied to this court for reimbursement for reasonable attorneys fees, cost [sic] and expenses incurred in representing Ms. Gina Trapani for the period from March 13, 1992 through September 12, 1992. Ms. Trapani[1] was an assistant to Mr. Scott Cone and

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[1] Ms. Trapani remained an employee of at least one of the Debtor corporations even after the management was replaced in the September of 1992.

Mr. Joe Olree, officers of the Debtor. Mr. John Wilson Reed and the law firm of Glass & Reed have applied to this court for reimbursement for reasonable attorneys fees, costs and expenses incurred in representing Mr. D. Scott Cone for the period from Marsh 9, 1992 to September 12, 1992. Mr. Cone[2] was an officer of Debtors. Mr. David Popper has applied to this court for reimbursement for reasonable attorneys fees, costs and expenses incurred in representing Mr. Mamal Matahari [sic] for the period from January 22, 1992 through June 10, 1992. Mr. Motahari was employed by the Debtor Landmark Land Company of Louisiana, Inc. Mr. Herbert V. Larson, Jr. has applied to this court for reimbursement of reasonable attorney fees, costs and expenses incurred in representing Mr. Mohamad Motahari for the period from March 12, 1992 through September 12, 1992. Mr. Motahari was employed by the Debtor Landmark Land Company of Louisiana, Inc. Finally, Mr. William R. Campbell, Jr. has applied to this court for reimbursement for reasonable attorneys fees, costs and expenses incurred for representing Mr. Gary Braun for the period from March 14, 1992 through September 12, 1992. Mr. Braun was employed by the Debtor Landmark Land Company of Louisiana, Inc. Mr. Braun filed a Motion on June 29, 1993, seeking court approval nunc pro tunc of his employment of Mr. Campbell as counsel.

On or about September 12, 1992, the Debtors' management headed by Mr. Barton, was replaced by a directorship elected by the RTC, as conservator for Oak Tree Savings Bank, which then owned a majority of the stock

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[2] Mr. Cone is now deceased.

in the Debtor companies. The new directorship elected to keep the Debtors in Chapter 11 reorganization proceedings in this district court. On or about October 7, 1992, Oak Tree Federal Savings Bank filed a stipulation of withdrawal of its Motion to Compel the Chapter 11 Debtors to Recover Attorneys Fees and Expenses Wrongfully Paid.

Under applicable state law, Debtors' officers, directors, agents and employees are entitled to indemnification, including the reimbursement of legal fees, if it is determined that the party acted in good faith and in a manner reasonably believed to be in the best interest of the corporation. *See* Cal. Corp. Code, § 317(b) and Cal. Civ. Code § 2802; *see also* Del. Code Ann. tit. 8, § 145(a); Fla. St. § 607.0850; La. Corp. Code, tit. 12, § 83; tit. 18, Okla. State § 1031; S.C. Code Ann. § 33-8-560. In addition to the resolution of the Board of Directors Landmark of Louisiana to pay the legal expenses of four individual employees, the Board of Directors of Clock Tower Place Investments, Ltd., authorized the indemnification of Mr. Barton and Mr. Vaughan for expenses incurred in the defense of their action taken on behalf of the corporation. Also, the Board of Directors of Landmark Land Company of Oklahoma, Inc., voted to indemnify Mr. Walser and Mr. Ille for attorneys fees, costs and expenses incurred in defense of their actions taken on behalf of the Debtor corporation.

Further the Debtors obtained the opinions of the law firm of Berman, Blanchard, Mausner & Kindem of Los Angeles, California and of the law firm of Mock, Schwabe, Waldo, Elder, Reeves, & Bryant of Oklahoma

City, Oklahoma, which both gave the Debtors their opinions as to the a [sic] corporation's right or obligation to indemnify its agents and officers.

> An Oklahoma corporation shall have the power to indemnify any person who was or is a party . . . to any threatened, pending or completed action . . . whether civil, criminal, administrative or investigative . . . by reason of the fact that he is or was a director, officer . . . or agent . . . or is or was serving at the request of the corporation as a director. . . . an agent or employee . . . against expenses incurred . . . in connection with such action . . . if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation . . . and had no reasonable cause to believe his conduct was unlawful.

18 Okla. Stat. § 1301A (1991).[3]

The legal fees paid on behalf of Barton, Ille, Walser and Vaughan, prior to the OTS amendment of the charges, are reportedly as follows:

Law Firm	Date of Bill	Fees	Expenses
Jones, Day, Reavis & Pogue	10/91	124,155.00	1,485.40
	11/1-20/91	40,697.50	10,943.95
McGlinchey, Stafford, Cellini & Lang	10/91	28,380.00	2,799.01
	11/1-20/91	26,390.00	2,803.65
Lawrence & Ellis	10/91	780.00	.46
	11/91-12/91	1,872.50	7.53

[3] The California Code states substantially the same view that a corporation may indemnify an agent of the corporation, including an agent who is serving at the request of the corporation. Cal. Corp. Code § 317(a).

Mr. Ille was the President and Chief Executive Officer of a subsidiary of the Debtor Landmark Land Company of Oklahoma, Inc. at the time the Debtors filed for bankruptcy protection. The charges brought against Mr. Ille by the OTS are undoubtedly the result of his association with the Debtors and for actions he took at the request of the Debtors. If Mr. Ille acted in good faith and not in a manner opposed to the best interests of the Debtors, at the behest of the Debtors, he is entitled to indemnification by the Debtors' estates, for the cost of defending himself for those actions he took on behalf of the Debtor corporations.

Mr. Barton, Mr. Vaughan and Mr. Walser were all officers or directors of one or more of the Debtor companies at the time of the bankruptcy filings and thereafter when called upon to defend themselves as to actions taken on behalf of the Debtors. Although, much has been made of the fact that Mr. Walser ultimately decided to resign his position with the Debtors voluntarily, Mr. Walser is as entitled to indemnification for his actions just as any other officer or agent of the Debtor.

Oklahoma statutory law further states that if a director or agent of a corporation is successful in the defense of any action under § 1301A, § 1301C requires that the corporation indemnify him for his expenses. Furthermore, the fact that an action is terminated by "judgment, order, settlement, conviction, or upon a plea of nolo contendere of its equivalent creates no presumption that a person did not act in good faith or in a manner reasonably believed to be in the best interest of the corporation. Further still, the right to indemnification and advancement of expenses continues as to a person who has

ceased to be a director officer, or agent, and shall also inure to the benefit of the heirs, executors, and administrators of such a person. 18 Okla. Stat. § 1301J (1991). However, in order to advance expenses the corporation must require a written undertaking on behalf of the indemnitee that if it is determined that advancement of expenses was improper that the corporation will be repaid.

The Debtor, Clock Tower Place Investments, is a California corporation. The Board of Clock Tower voted to indemnify Vaughan and Barton. Under the California Labor Code § 2802, an employer is required to indemnify his employee for costs expended by the employee which are directly the consequence of the discharge of his duties or his obedience to the directions of his employer, so long as the employee did not believe at the time of his performance that his actions were unlawful. Clock Tower sought legal counsel on the issue of indemnification and it was determined that a failure by Clock Tower to agree to indemnify its employees for costs incurred and those to be incurred, as required by California labor law, could subject Clock Tower to a suit for damages for breach of a duty to indemnify.

Testimony secured at the hearing shows that Mr. Gerald Barton has paid the legal fees in question on behalf of himself and the three others who were named in the original OTS charges. Mr. Barton also testified that if he were reimbursed by the Debtors for the legal fees incurred for defending himself and the three other individuals, and later it was determined that the actions of those parties in filing for Chapter 11 protection was not taken in good faith on behalf of the Debtors, Mr. Barton

would re-pay the Debtors' estates for the monies reimbursed to him for his legal fees. The evidence presented at the hearing indicated that the three other individuals, for whom Barton paid their legal fees, do not have adequate resources to re-pay the Debtors' estates: but later the Debtors' supplemental motion papers included statements indicating that all were willing to repay the Debtors' estate if it were determined that they had not acted in good faith on behalf of the Debtors.

Mr. Barton further testified that the members of the Board of Directors who voted on the resolution to pay the legal expenses of the Debtors' agents did so to preserve the management that remained in place during the difficult period immediately following the filing of the bankruptcy petitions. Post-petition corporate stability certainly includes providing employees with the reassurance employees that the corporate decision to enter the reorganization process will not subject mid-level employees to the cost of protecting themselves in criminal or quasi-criminal investigations into the Debtors' activities. The evidence further shows that costs were advanced to certain individuals on the advice of counsel.

Upon consideration of the applications of Campbell, Larson, Habans, Reed and Popper, the court finds that all are entitled to be paid for the reasonable Fees and Expenses incurred in the representation of the named Debtors' employees, as indicated in their applications, to wit:

Applicant	Fees	Expenses
William Campbell	1,612.50	2.81
Herbert Larson	35,077.00	1,728.50
Robert Habans	7,677.00	208.06
David Popper	51,850.00	5,397.81
John W. Reed	35,550.00	2,391.23

Furthermore, the court finds that certain Fees and expenses have been paid and further that there are sums outstanding and yet to be paid by Debtors' estates on behalf of the named individual employees, as follows:

Applicant	Fees and Expenses Incurred	Fees Paid	Due
Campbell	1,615.31	1,440.31	175.00
Larson	36,805.50 less $370.00	36,528.39[4]	-92.89
Habans	7,885.06	7,000.00	885.06
Popper	57,247.81	48,113.00	9,134.81
Reed	42,341.23	29,411.50	12,929.73

The court further finds that the Debtors' estates must indemnify those officers, directors, and agents of the Debtors for the costs of defending themselves for actions taken in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Debtors

[4] Mr. Larson attests that there was a credit on Mr. Motahari's bill in the amount of $370.00. If Mr. Larson's other figures as to "fees and expenses incurred" and "fees paid" are correct, then with a $370.00 credit, Mr. Larson was over paid in the amount of $92.89.

in placing the Debtors in bankruptcy. Further, this court finds that the evidence demonstrates that the officers and directors of the Debtor companies sought the protection of the bankruptcy court in good faith. Further this court finds that the Debtors' new management ratified the decision to reorganize under the protection of the bankruptcy court, demonstrating that the placement of the Debtors into bankruptcy is reasonably viewed as being in the best interest of the Debtors.

Accordingly,

IT IS ORDERED THAT Debtors' Joint Motion for an order Authorizing Debtors to Reimburse Certain Costs of Defense Incurred By Officers, Directors and Employees in Administrative Proceedings be and hereby is granted.

IT IS FURTHER ORDERED THAT the applications of Messrs. Habans, Campbell, Larson, Popper and Read, and the law firms of Popper & Popper, and Blass & Reed for the payment of attorneys fees and costs be and hereby are approved.

IT IS FURTHER ORDERED THAT the motion of Gary Bruan [sic] to employ counsel nunc pro tunc be and hereby is granted.

IT IS ORDERED THAT Debtors' estates shall pay all costs reasonably incurred by Mohamad Motahari, Gina Trapani, D. Scott Cone, and Gary Braun in any civil, criminal, or investigative proceeding or from any threatened or actual charges which are the result of actions taken as employees in the discharge of their duties or at the direction of one of the Debtor companies.

IT IS FURTHER ORDERED THAT the Debtors' estates shall indemnify Gerald G. Barton, Bernard G. Ille, William W. Vaughan, II, and Joe W. Walser, Jr., for all expenses reasonably incurred by them in the defense of any civil, criminal or administrative charge or other proceeding stemming from their actions as officers, directors and agents of the Debtor companies taken in good faith with the reasonable belief that such actions were not opposed to the best interests of the Debtor companies.

IT IS SO ORDERED.

/s/ Falcon B. Hawkins
Falcon B. Hawkins,
United States District Judge

Charleston, South Carolina
May 27th, 1994.

FILED: April 15, 1996

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 94-2475(L)

CA-91-5287-2-1

In Re: LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, et al.

Debtors.

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, d/b/a West Beach Tennis Ranch, d/b/a West Beach Tennis Parking, d/b/a Turtle Point, d/b/a Town Center, d/b/a Osprey Point Golf Course, d/b/a Kiawah Island Beach Resorts, d/b/a Kiawah Island Villa Rental, d/b/a Kiawah Inn, Night Heron Park, d/b/a Marsh Point Golf Course, d/b/a Links Golf Course, d/b/a Conference Center, d/b/a East Beach Tennis Center, d/b/a Dune & Lagoon Lodges, d/b/a Club Conference Center, a Delaware Corporation, et al.

Debtor - Appellants,

RESOLUTION TRUST CORPORATION, a receiver (formerly conservator) for Oak Tree Federal Savings Bank

Creditor - Appellant,

versus

D. SCOTT CONE; JOHN WILSON REED

Respondents - Appellees,

WILLIAM CAMPBELL, JR.; et al.,

Claimants - Appellees,

MCNAIR & SANFORD, P.A.; JONES, DAY, REAVIS & POGUE; MCGLINCHEY, STAFFORD, & LANG,

Parties in Interest - Appellees,

HOTEL OF PALM SPRINGS; et al.,

Creditors,

ANDREW M. MASCIARELLA; et al.,

Claimants,

LANDMARK COMMUNITIES COMMITTEE, INCORPORATED,

Intervenor - Plaintiff,

PGA WEST RESIDENTIAL ASSOCIATION, INCORPORATED; et al.,

Respondents,

US TRUSTEE,

Trustee.

ORDER

Appellees, Gerald G. Barton, William W. Vaughan, II, and Joe W. Walser filed a motion for reconsideration of the court's denial of the petition for rehearing with the suggestion for rehearing en banc.

The Court denies the motion for reconsideration.

Entered at the direction of Judge Russell with the concurrence of Judge Michael and Judge Niemeyer.

For the Court,
/s/ Bert M. Montague
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
April 2, 1996

No. 94-2475
BK-92-77109
CA-92-3548-2-1
BK-91-5818
CA-91-3288-2-1
CA-91-5288-2-1
BK-91-5819
CA-91-3289-2-1
CA-91-5829-2-1
BK-91-5817
CA-91-3290-2-1
CA-91-5290-2-1
BK-91-5816
CA-91-3291-2-1
CA-91-5291-2-1
BK-91-5815
CA-91-3286-2-1
CA-91-5386-2-1
BK-91-5814
CA-91-3287-2-1
CA-91-5287-2-1

In Re: LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, an Oklahoma Corporation
LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, a Louisiana Corporation

CARMEL VALLEY RANCH, a California Corporation
CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation

Debtors

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, d/b/a West Beach Tennis Club, d/b/a West Beach Tennis Parking, d/b/a Turtle Point, d/b/a Town Center, d/b/a Osprey Point Golf Course, d/b/a Kiawah Island Resorts, d/b/a Kiawah Island Villa Rental, d/b/a Kiawah Inn, d/b/a Night Heron Park, d/b/a Marsh Point Golf Course, d/b/a Links Golf Course, d/b/a Conference Center, d/b/a East Beach Tennis Center, d/b/a Dune & Lagoon Lodges, d/b/a Club Conference Center, a Delaware Corporation;
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, d/b/a Oak Tree Golf Club, d/b/a Oak Tree Properties, d/b/a Caston Lumber Company, a/k/a Oakridge Manor, d/b/a Oak Tree Communications, d/b/a Oak Tree Country Club, d/b/a Oak Tree Development, d/b/a Oklahoma Business Investments, Incorporated, d/b/a Oak Tree Estates, d/b/a The Waterford Hotel, d/b/a Redlands, an Oklahoma Corporation;
LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, d/b/a Palm Beach Polo and Country Club, a Delaware Corporation;
LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, d/b/a Oak Tree Realty, d/b/a Oak Harbor Yacht and Country Club, d/b/a Oak Harbor (formerly Eden Isles), d/b/a Landmark Realty, d/b/a Landmark Real Estate, d/b/a Landmark Homes, d/b/a Landmark Asset Management Group, d/b/a LML Real Estate Company, d/b/a Belle Terre Golf and Country Club, a Louisiana Corporation;

LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, d/b/a Mission Hills Resort Condominiums, d/b/a Thermal Nursery, d/b/a Stanford Oaks, d/b/a Sanders Real Estate Company, d/b/a Recreational Resort Marketing Venture, Limited, d/b/a PGA West, d/b/a Oak Valley Country Club, d/b/a Oak Valley, d/b/a Oak Tree Hotels, Incorporated, d/b/a Oak Summit, d/b/a National Car Rental Agency, d/b/a Moreno Valley Ranch Golf Club, d/b/a Moreno Valley Ranch, d/b/a Moreno Valley Auto Mall, d/b/a Mission Hills Tennis Club, d/b/a Mission Hills Resort Golf Club, d/b/a Mission Hills Resort Condominiums, d/b/a Mission Hills Real Estate, d/b/a Mission Hills Real Estate Company, d/b/a Mission Hills Golf Club, d/b/a Mission Hills General and Administrative Committee, d/b/a Mission Hills Country Club, d/b/a Mission Hills Corporation, d/b/a Mission Hills Company, d/b/a Landmark Special Events, d/b/a Landmark Real Estate Company, d/b/a Landmark Productions, d/b/a Landmark Mortgage Company, d/b/a Landmark Land Golf Company, d/b/a Landmark Event Management, d/b/a Landmark Communications, Incorporated, d/b/a La Quinta National Golf Club, d/b/a La Quinta Leasing, d/b/a La Quinta Hotel Tennis Club, d/b/a La Quinta Hotel Real Estate Company, d/b/a La Quinta Hotel Golf Club, d/b/a La Quinta Hotel Golf and Tennis Resort, d/b/a La Quinta Hotel, d/b/a La Quinta Golf Academy, d/b/a La Quinta Cove, d/b/a La Quinta Air Services, d/b/a LML Real Estate Company, Incorporated, d/b/a LML Mission Hills Corporation, d/b/a LML Construction Co., d/b/a Greenspot, d/b/a Foster Turf Products, d/b/a FTP Wholesale Growers, d/b/a FTP/Bergen Nurseries, d/b/a Dixie Mortgage Company, d/b/a Carmel Valley Ranch Real Estate Company, d/b/a Bergen Nursery, d/b/a Acorn Purchasing, a Delaware Corporation;

CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation;

CARMEL VALLEY RANCH, a/k/a Carmel Valley Ranch Tennis Club, a/k/a Carmel Valley Ranch Resort, a/k/a Carmel Valley Ranch, Incorporated, a California Corporation;

Debtor - Appellants

RESOLUTION TRUST CORPORATION, a receiver (formerly conservator) for Oak Tree Federal Savings Bank

Creditor - Appellant

v.

D. SCOTT CONE, JOHN WILSON REED,

Respondents - Appellees

BERNARD G. ILLE, DAVID POPPER, GARY BRAUN, GERALD G. BARTON, GINA TRAPANI, HERBERT V. LARSON, JR., JOE W. WALSER, JR., LAW FIRM OF POPPER & POPPER, LAW FIRM OF GLASS & REED, MOHAMAD MOTAHARI, ROBERT H. HABANS, WILLIAM W. VAUGHAN, III, WILLIAM CAMPBELL, JR.,

Claimants - Appellees

JONES, DAY, REAVIS & POGUE, MCGLINCHEY, STAFFORD & LANG, MCNAIR & SANFORD, P.A.,

Parties in Interest - Appellees

ALPHA NURSERY, INCORPORATED, ARVIDA/JMB PARTNERS, BART BOREN, BERNARDO GOUTHIER, BORAL RESOURCES, INCORPORATED, C. M. HUBBARD & SONS, CECIL ROTH FARMS, COASTAL INSTITUTIONAL DISTRIBUTORS, CRI, INCORPORATED, E. MCGRATH APPAREL COMPANY, ERNIE ZIELINSKI FARMS, FARM CREDIT SERVICES OF SOUTHERN CALIFORNIA, FLORIDA ROWING CENTERS, INCORPORATED, GLEN ROTH FARMS, GLEN ZIELINSKI FARMS, GORDON WHEELER GALLERY, HAYWORTH FARMS,

INCORPORATED, HIGH TECH IRRIGATION, INCORPORATED, HOTEL OF PALM SPRINGS, IMAGE NETWORK, INCORPORATED, ITT ADMINISTRATORS, J. J. KREBS & SONS, INCORPORATED, LAIDLAW WASTE SYSTEMS, INCORPORATED, LOUIS L. KOKKELER, M&D MCKAY FARMS, INCORPORATED, MATT ROTH, MIKE THOMPSON, MULLEN FARMS, an Oregon Partnership, PALM BEACH POLO AND COUNTRY CLUB PROPERTY OWNERS' ASSOCIATION, INCORPORATED, PAN AMERICAN LIFE INSURANCE COMPANY, PGA WEST, POHLSCHNEIDER FARMS, INCORPORATED, PRICE WATERHOUSE, PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUDENTIAL INSURANCE COMPANY, INCORPORATED, QUAIL VALLEY MANAGEMENT, INCORPORATED, QUINN, EMANUEL & URQUHART, SOUTHERN FARM BUREAU, SUNRISE COMPANY, SUSAN VINEYARD, UNSECURED CREDITORS COMMITTEE,

Creditors.

88314 ONTARIO LIMITED, 52ND STREET FARM MARKETS, A&B BUILDING MAINTENANCE, A. BYRON PERKINS, A. C. HOUSTON LUMBER COMPANY, A.C. NEWMAN & COMPANY INSURANCE, A. C. PUMP SERVICE, INCORPORATED, A. D. FRESHOUR, A. J. AMENDOLA, A. LINC LANCET, A. N. SPENCER, A. WALLY SANDACK, A-1 FIRE EQUIPMENT, A-ALADIN TRAVEL, A-Z OFFICE SUPPLY, AAA RENTALS, INCORPORATED, AABACO INDUSTRIES, INCORPORATED, AAR/NEWAY UNIFORM SUPPLY, AB & ASSOCIATES, ABACUS TEMPORARY SERVICES, INCORPORATED, ABLE LAWNMOWER SALES AND SERVICE, ABOUT TRAVEL, INCORPORATED, ABSOLUTE CLEANING COMPANY, ACCENT LANDSCAPING & PAVING, ACE ALTERNATORS, INCORPORATED, ACE HARDWARE,

#2786F, ACE PRINTING COMPANY, ACKERLEY AIRPORT ADVERTISING, ACME DISPLAY FIXTURE COMPANY, INCORPORATED, ACME RESTAURANT SUPPLY, ADAM J. MICHAEL, ADOHR FARMS, INCORPORATED, ADRIAN GOLDSTEIN, ADRIAN MARSDEN, ADVANCED AMENITIES, ADVANCED TELECOMMUNICATIONS CORPORATION, ADVANCED TELEPHONE TECHNOLOGY, ADVANCED DRAINAGE SYSTEMS, INCORPORATED, ADVANTA LEASING CORPORATION, AIRBORNE FREIGHT CORPORATION, AJAX OF LOUISIANA, AJF LEASING, INCORPORATED, a division of AJF Warehouse Distributors, Incorporated, AL PACKER FORD WEST, ALAN C. FURTH, ALAN C. NEWMAN, ALAN D. HIURA, DDS, ALAN H. LAZARUS, ALAN G. DAVIS/AGD INVESTMENTS CORPORATION, ALAN G. GRAY, ALAN G. PEDERSEN, ALAN H. BEYER, ALANNAH SINCLAIRE, ALBERT G. SIMPSON, JR., ALBERT J. STODDART, ALBERT LEGITTINO, ALBERT R. SIMON, ALDO J. TEST, ALEX N. CAMPBELL, ALEX SHERMAN, dba A&S Coffee Services, ALFRED A. LEVIN, ALFRED SHAIN, ALL YOUR NEEDS MET, ALL CLEAR WINDOW CLEANING, INCORPORATED, ALLEN H. OGLANDER, ALLEN O. HUFF, ALLEN FREIDSON, ALLEN MERCHANT, ALLEN NEWTON, M.D., ALLEN T. BROWN, ALLEN W. SHARPE, ALLIE MAE, ALMAR CHEMICAL COMPANY, INCORPORATED, ALOE UP PALMS, ALTA DENA CERTIFIED DIARY, INCORPORATED, ALTERMAN STUDIOS, INCORPORATED, ALVIN H. BLAINE, ALVIN L. RUSSO, ALVIN S. MORROW, M.D., ALYS M. BACHLER, AMBASSADOR FACTORS DIVISION OF FLEET FACTORS CORPORATION, AMERICA'S CHOICE COMPANY, AMERICAN COASTAL DEVELOPMENT CORPORATION, AMERICAN LINEN SUPPLY COMPANY, AMERICAN HOTEL REGISTER COMPANY, AMERICAN EXPRESS TRAVEL RELATED, AMERICAN LUMBER & SUPPLY, ANDERSEN & ASSOCIATES, ANDERSON

ARMORED CAR SERVICE, INCORPORATED, ANDREW C. SMITH, ANDREW INGRAM, ANDREW J. FENADY, ANDREW KRISTO, ANDREW L. ANDERSON, ANDREW M. MASCIARELLA, ANDREW P. LOMBARD, ANDREW ROSSI, ANDY ZEHNDER, ANGELICA UNIFORM GROUP, ANHEUSER-BUSCH COMPANIES, ANITA FELLER, dba Anita's, ANITA VORHEES JACKSON, ANNABELLE SAFRAN, ANNANDALE GOLF CLUB, ANNENBERG CENTER AT EISENHOWER, ANNELY M. KLINGENSMITH, ANTHONY G. QUADROS, ANTHONY J. CARR, ANTHONY J. MARTINO, ANTHONY J. PORCELLO, ANTIGUA SPORTSWEAR, INCORPORATED, APPLAUSE, INCORPORATED, APPLIED TECHNOLOGY & MANAGEMENT, INCORPORATED, APPLIED SOIL MECHANICS, INCORPORATED, AQUA-SERV ENGINEERS, INCORPORATED, ARA SERVICES MAGAZINE & BOOK DIVISION, ARETA B. MCKENZIE TRUST, ARIZONA MANUFACTURING & EMBROIDERY, ARMIN F. STEINER, ARREST A PEST, ARROW LANDSCAPES & MAINTENANCE, INCORPORATED, ART & LETTER SERVICE, ARTESIA IMPLEMENT, ARTHUR B. HORTON, ARTHUR C. LINNEMEYER, ARTHUR C. SCHULER, ARTHUR E. BRANDT, ARTHUR E. NELSON, ARTHUR L. JACOBSON, ARTHUR MAGISTER, ASAP ICE, ASHELY D. HOFFMAN, ASHLAND CHEMICAL, INCORPORATED, ASIAN AMERICAN PARTNERS, ASSIST COMPUTER CONSULTANTS, ASSOCIATED UNIFORM RENTAL & LINEN SUPPLY, INCORPORATED ASSUMPTION PARISH, AT ONCE TEMPORARY SERVICES, AT&T, ATKINSON POOL COMPANY, INCORPORATED, ATLANTIC SERVICES, INCORPORATED, ATLAS COATING COMPANY, INCORPORATED, AUBREY DEVINE, AUREUS LIMITED, AVID SPORTSWEAR, INCORPORATED

B&C TURF PRODUCTS, INCORPORATED, B&C SEAFOOD, INCORPORATED, B&M MAPS, B. D. CHAMAS, B. J. BUCHANAN, B. RENEE HAMEL, BAKER AUDIO,

INCORPORATED, BANCBOSTON FINANCIAL COMPANY, BANCROFT-WHITNEY LAW PUBLISHERS, BANKSOUTH, N.A., BANNING ACE HARDWARE 5826S, BARBARA EDEN, BARBARA MARCHITELLI, BARBARA ROGERS, BARNEY J. BELLELI, BARRY M. TAYLOR, BARRY PRESSMAN, BARRY W. GENDELMAN, M.D., BASE DISTRIBUTORS, INCORPORATED, BAUER TIRE INCORPORATED, dba Goodyear Tire Center, BAUSCH & LOMB INCORPORATED, BAYLAUREL CORPORATION, a California corporation, BAYSHORE PUBLISHING GROUP, INCORPORATED, BEACHCOMBERS, INCORPORATED, BEAUMONT SAFE & LOCK, BEAUMONT TIRE & MUFFLER SERVICE, INCORPORATED, BELLE POINT DRAINAGE DISTRICT, #1, BELLERIVE COUNTRY CLUB, BELLSOUTH ADVERTISING & PUBLISHING COMPANY, BELLSOUTH COMMUNICATION SYSTEMS, INCORPORATED, BEN PON, BEN HOGAN COMPANY, BEN HARRIS, BEN E. KEITH FOOD COMPANY OF OKLAHOMA, BEN ARNOLD COMPANY, INCORPORATED, BEN F. NIEMAN, BEN RASKIN, BENTLEY PRITSKER, BENTON'S PAINT, INCORPORATED, BERIT FALGE, BERKELEY ELECTRIC COOPERATIVE, INCORPORATED, BERKLEY DAVID DESIGNS, BERLE MANUFACTURING COMPANY, BERMUDA DUNES COUNTRY CLUB, BERNARD A. SCHLIFKE, BERNARD DICKENS, BERNARD E. MCKUNE, BERNARD P. KIRKPATRICK, BERNICE BUSH-POPE, BERNIE'S CUSTOM CLEANING, INCORPORATED, BERT FULLER, BETSY B. BENNETT, BETTIE GRESHAM YODER, fka Bettie Gresham Glover, BETTY BELDEN PALMER, BEVERLY ANN RILEY, BEVERLY E. HAMILTON, BEVERLY F. DAROCZY, Trustee, BIG "A" AUTO PARTS, INCORPORATED, BIG CANYON COUNTRY CLUB, BIGGERS BROTHERS, INCORPORATED, BILL D. CATES, BILL D. SAXON, BILL HAWKS, BILL MORRIS, BILL SIMPKINS, dba Re'Al Sportswear, BILL SLIFER, BILL STUBBS, BILLY G. FIELDER, BILLY R. AUSTIN,

BILLYE R. AUSTIN, BILLY'S PINESTRAW, BIOTECH PRODUCTS, INCORPORATED, BJARNE QVALE, BLACKIE SERVICES, BLANCHARD MACHINERY COMPANY, BLP MOBILE PLANT – LA PLACE, BLUE FLAME GAS COMPANY, INCORPORATED OF CHARLESTON, BMI SYSTEMS CORPORATION, BOAST, INCORPORATED, BOB G. ALEXANDER, BOB MANFRE, BOBBIE PRECKWINKLE, BOBBY M. CLARK, BOBBY PEULAUD, BOBWHITE SPECIALISTS, INCORPORATED, BOCA TIRES, INCORPORATED, BOHEMIAN DISTRIBUTING COMPANY, BOHICKET YACHT CHARTERS, BOMARC PAPER & PACKAGING INCORPORATED, BOOSE, CASEY, CIFLIN, LUBITZ, MARTIS, MCBANE & O'CONNELL, BORDELON & HILL, BOSTON TRADING LIMITED, INCORPORATED, BOUCHEREAU OIL COMPANY, BOURG SIGNS, BOYD L. JEFFERIES, BOYNTON PUMP & IRRIGATION SUPPLY, BRADFORD A. CARL, BRADFORD KING KROHA, BRADLEY HEATING & AIR CONDITIONING, INCORPORATED, BRADLEY K. PENCE, BRAUN/A-1 LINEN SERVICE, BRENT S. ENRIGHT, BRIAN MILLEMAN, BRIAN O. SHANNON, BRIAN W. HOLMES, BRIGMAN FOODS, INCORPORATED, BRITISH OPEN FOR J&F, BROWNIE'S BLUEPRINT COMPANY, INCORPORATED, BROWNING FERRIS INDUSTRIES, BRUCE A. KAPLAN, BRUCE C. ANDERSON, BRUCE C. RICHARDS, BRUCE D. GRAY, BRUCE G. SCHWARTZ, BRUCE GALVANEK, BRUCE J. HOESMAN, BRUCE L. DOW, BRUCE M. GALLAHER, BRUCE R. BAUMANN, BRUCE ROLLICH, BRUCE ROTHMAN, BRUCE S. CRAMPTON, BRUCE W. FRANKLIN, BRUNO A. GIORDANO, BRUNO BURKLIN PHOTO, BRYAN R. GERSTEL, BRYANT FINANCIAL CORPORATION, BUCKHEAD BEEF COMPANY, INCORPORATED, BUD D. KLEIN, BUILDERS SQUARE, BURBERRY/BIDERMANN INDUSTRIES, BURBERRYS WHOLESALE LIMITED, BUSH BROTHERS PROVISION COMPANY, BUSINESS BASICS, BUTLER BOX & STAKE,

INCORPORATED, BUTLER NATIONAL GOLF CLUB, BUTLER PAPER COMPANY, BUTTERFLY FLOWER SHOP, BYRON RONALD MILLER

C&H DESIGNS, C&S FURNITURE RENTALS, C&S SOVRAN COMMERCIAL CORPORATION, fka C&S Commercial Corporation, C. ANNETTE HARVEY, C. COURTNEY WOOD, C. DWAINE CARVER, C. E. SINGLETON, C. KENNETH SUGLER, C. MARVIN MAY, C. R. BROWN, C. W. SPANGLE, CABLE & CONNECTOR WAREHOUSE, INCORPORATED, CACTUS COVE SEAFOODS, INCORPORATED, CALI-FAME OF LOS ANGELES, INCORPORATED, CALIFORNIA COUNTRY CLUB, CALLAWAY GOLF, CALYX & COROLLA, INCORPORATED, CAMELOT NURSERIES, INCORPORATED, dba Mountain States Wholesale Nursery, CAMPBELL'S LIGHTING & SIGNS, CANNINGS BREA HARDWARE, INCORPORATED, CANNINGS SEA FOODS, INCORPORATED, CAPITAL FACTORS, INCORPORATED, CARCOMM, INCORPORATED, CARDINAL PAPER COMPANY, CARL A. JONSON, CARL E. BROOKS, CARL EUGENE FRANKLIN, CARL T. WILLINGHAM, CARLOS LEITE, CARLSON TRAVEL NETWORK, CARMEL VALLEY RANCH REAS ESTATE COMPANY, CAROL B. PLUMMER, CAROL SLIFER, CAROLINA GOLF CAR SYSTEMS, CAROLINA MOUNTAIN WATER, INCORPORATED, CAROLINA RETAIL PACKAGING, INCORPORATED, CAROLINA SOUND COMMUNICATIONS, CAROLINA SUPPLIES & CEMENT COMPANY, INCORPORATED, CAROLINA TURF FARMS, INCORPORATED, CAROLINAS CHAPTER – M.P.I., CAROLYN CRIST, CAROLYN H. HUNT, CARR EXTERMINATING COMPANY, CARR PAPER COMPANY, INCORPORATED, CARRIE SMITH, CARRIER CORPORATION, CARYL E. ORANGES, CATHEDRAL CITY POSTAL COMPANY, CATHERINE G. CROMER, CAVANAUGH ELECTRIC, CELLULAR ONE, CENTRAL CONTROL

COMPANY, CENTRAL OKLAHOMA PRODUCE SERVICE, CHANDLER CONSTRUCTION COMPANY, CHARLENE DIMOND, CHARLES CHIPS OF PALM BEACHES, INCORPORATED, CHARLES A. BONNETT, Doctor, CHARLES A. POTTER, CHARLES B. MONTGOMERY, CHARLES D. EDISON, CHARLES D. SHUBIN, CHARLES E. NOREEN, CHARLES F. ADAMS, CHARLES F. WEHRLY, CHARLES F. WENDT, CHARLES GILBERT COLBY, CHARLES GIORNESTO, JR., CHARLES H. BOOTH, JR., CHARLES H. BROCK, CHARLES HARRIS, CHARLES HOUGH, CHARLES KAMPINSLI, CHARLES L. MCCUBBINS, CHARLES L. RUPPERT, III, CHARLES M. MCCORKLE, CHARLES MERTEN, dba Studs & Duds, CHARLES N. VAUGHN, CHARLES R. WINTERROWD, CHARLES V. KLINE, CHARLES GRENADIER, CHARLES P. FALCONE, CHARLES PIUS, CHARLES R. REED, CHARLES R. STARR, CHARLES SCHWARTZ, CHARLES SNYDER, CHARLES WEISBERG, CHARLESTON PAPER COMPANY, CHARLESTON NEWS COMPANY, CHARTER GOLF, INCORPORATED, CHEM-DRY OF COACHELLA VALLEY, CHERRY VALLEY SANITATION SERVICE, INCORPORATED, CHERYL M. HUDAK, CHERYL SAVAGE, CHESTER R. SAZENSKI, CHIEF SIGN CRAFTS, CHONG HOON KIM, aka (Tom) Chong Hoon Kim, CHRIS M. PEDERSEN, CHRIS MALETIS, III, CHRIS PALLES, CHRISTINE & ROB'S, INCORPORATED, CHRISTINE CORONA, CHUNG BAE, CHURCH DIALING COMPANY, INCORPORATED, CHURCH CREEK NURSERY, INCORPORATED, CIMTEX, INCORPORATED, dba Roche, CINDY BAKER, CINDY GUILLOT, CINDY SEBALD, CITIBANK LEASING CORPORATION, fka Caribank Leasing Corporation, CITIZENS INVESTMENT CORPORATION, CITY OF BREA, CITY OF MORENO VALLEY, CITY OF OKLAHOMA WATER RESOURCES DEPARTMENT, CITY OF EDMOND, OKLAHOMA, CITY ELECTRIC, INCORPORATED, CITY OF RANCHO MIRAGE, CITY OF TULSA, CITY OF

OKLAHOMA, CITY SEA FOODS, INCORPORATED, CLAIR E. LEEDOM, CLARENCE H. FOSSIER, M.D., CLARENCE J. FERRARIE, JR., CLASSIC APPAREL, CLASSY BASKETS & EDIBLES, CLAUDE ELLENA, CLAYTON D. RUSSELL, CLEANING WIZARDS, CLIFF N. MORTENSEN, CLIFFORD A. MORTON, CLIFFORD C. CRANDALL, CLIFFORD H. EVANS, CLIFFORD L. GANT, CLIFFORD SEWELL, CLIPPER UNLIMITED, INCORPORATED, CLUB CAR, INCORPORATED, CNA INSURANCE COMPANY, dba Transportation Insurance Company, COACHELLA VALLEY MOSQUITO ABATEMENT DISTRICT, COACHELLA VALLEY PUMP & SUPPLY, INCORPORATED, COACHELLA VALLEY WATER DISTRICT, COASTAL VIDEO REPAIR, COATS VIYELLA, COBRA GOLF, INCORPORATED, COFFEE SERVICE COMPANY, COLE HAAN, COLLEEN ANNE GALAVIZ, COLLEGE HOUSE, INCORPORATED, COLORADO LEISURE SPORTSWEAR CORPORATION, COLUMBIANKNIT, INCORPORATED, COM SER COMPANY, COMMERCIAL FACTORS OF MINNESOTA, COMMERCIAL LINEN SUPPLY, COMPLETE BUSINESS SYSTEMS, INCORPORATED, COMPUTERIZED SECURITY SYSTEMS/WINFIELD LOCKS, INCORPORATED, COMPUTERLAND, COMPUTERS FOR TRACTS, INCORPORATED, CONAGRA, INCORPORATED, dba Mapelli Food Distribution Company, CONCO FOOD SERVICE, CONNIE D. WILSON, CONNIE P. SIEGAL, CONNIE W. JOHNSON, CONRAD LOPES, CONSOLIDATED WHOLESALE COMPANY, CONSOLIDATED FOOD SERVICE COMPANIES, CONSOLIDATED ELECTRICAL DIST., INCORPORATED, CONTINENTAL BAKING COMPANY, COOPERRIDER FAMILY TRUST, COR O. 1 REFINERY, CORBIN, LIMITED, CORRINE PATTON MARTIN, COUNTY CHEMICALS OF RIVERSIDE COUNTY, COUNTY OF RIVERSIDE, TREASURER TAX COLLECTOR, COUNTRY CLUB PUBLICA, County Club Publications, Incorporated, COUNTRY CLUB SALES,

COVINGTON COUNTRY CLUB, COVINGTON TECHNOLOGIES, COWIN E. ROBERT, CP COMMUNICATIONS, INCORPORATED, CRAIG E. KREIBICH, CRAIG E. VOLLHABER, CRAIG RIDENOUR, CREIGHTON LACEY-BAKER, CRAVENS AUTO ELECTRIC COMPANY, CROSS CREEK APPAREL, INCORPORATED, CTI/CREATE THE IMAGE, INCORPORATED, CULLIGAN WATER CONDITIONING, CURTIS F. WAHL, CURTIS L. NORMAN, CUSACK WHOLESALE MEAT COMPANY, CUSTOM GOLF CLUBS, CYNTHIA L. BUSBY, CYPRESS ELECTRICAL CONTRACTOR, INCORPORATED, CYRK, INCORPORATED

D&V CARTING INCORPORATED, D&S REBUILDERS, INCORPORATED, D. A. FROMDAHL, D. ARTHUR SANCHEZ, D. B. MCLELLAN, D. C. VIENT, D. EUGENE MOENCH, D. GENE MCCRORY, D. MARK GOODING, D. MICHAEL JONES, D. WENDELL DICKEY, DAILEY-FOTORNY, INCORPORATED, DAIWA GOLF COMPANY, DALE A. NORGREN, DALE HAASE, DALE HUSS, DALE WIGLEY, DALE NORERENN, DAN WALDOCH, DAN J. AGNEW, DAN J. REEVES, DAN L. CARLIN, DAN W. LYONS, DANIEL E. WILKEN, DANIEL MILOSEVICH, DANIEL P. DECLARK, DANIEL W. SHEPARDSON, DANIEL V. WALDOCK, DANKA LEASING, DANKA BUSINESS SYSTEMS, INCORPORATED, DANN DEE DISPLAY FIXTURES, DANNY S. LASKOWITZ, DARLA J. KERSHAW, DARLYN DESIGNS, INCORPORATED, DARRELL J. WILLIAMS, DARRYL ELLINGSON, DAVE YOUNGQUIST, DAVID & BARBARA SENESCU, DAVID A. MARKMAN, M.D., DAVID ARCHER BAND, DAVID BRIAN BOGGS, DAVID C. FARR, DAVID L. HOTT, DAVID L. STEFFY, DAVID MARKEL, DAVID E. BURTON, DAVID E. PALM, DAVID FARNELL, DAVID H. HAYES, DAVID J. DEMAINE, DAVID J. MONAGHAN, DAVID J. STORSTAD, DAVID L. CSNIKSHANK, DAVID L. MITCHELL, DAVID L. WELCH, DAVID ROBERT CLARK, DAVID R. FOSTER, DAVID R. SANDBERG,

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WATSONVILLE COAST PRODUCE, INCORPORATED, WAVERLY COUNTRY CLUB, WAXIE'S ENTERPRISES, WAYNE A. LEBLAND, WAYNE D. STINNETT, WAYNE GEMAS, WAYNE H. LARSON, WAYNE THORSON, WAY'S GARAGE, INCORPORATED, WELDON, WILLIAMS & LICK, INCORPORATED, WELLINGTON ACE HARDWARE, INCORPORATED, WELLS FARGO BANK, WENDEL D. TATE, WENDELL MOREY, WEST ASHLEY CHURCH, WEST CENTRAL PRODUCE, WEST COAST FOODS, INCORPORATED, WEST GATE SHEET METAL, INCORPORATED, WEST PUBLISHING COMPANY, WESTERN FARM SERVICE, INCORPORATED, WESTERN GOLF INCORPORATED, WESTERN LAND PARTNERS I, a general partnership, WESTERN RESORT PUBLICATIONS, WESTERN TURF, WESTINGHOUSE ENVIRONMENTAL & GEOTECHNICAL, WESTLAKE HARDWARE, INCORPORATED, WGM/HYDRO, WHITEHURST ALUMINUM PRODUCTS COMPANY, WHITEWATER ROCK & SUPPLY COMPANY, WIGINTON FIRE SPRINKLERS, INCORPORATED, WILBUR-ELLIS COMPANY, WILLARD A. HUGHES, WILLARD L. SCHMIDT, WILLARD M. GILLIES, WILLIAM A. DALHAMER, WILLIAM A. GOTHARD, WILLIAM A. MOODY, WILLIAM A. TEIPNER, WILLIAM ANDREW EKLUND, WILLIAM BLAIR DALBEY, WILLIAM C. BROWN, WILLIAM C. GARLAND, WILLIAM C. KELLOGG, WILLIAM C. NEESLEY, WILLIAM CHADNEY, WILLIAM CHAGARES, WILLIAM D. DAVIS & SONS, INCORPORATED, WILLIAM D. GWYNNE, WILLIAM DETRIXHE, WILLIAM DOYLE, WILLIAM E. DAHLBERG, WILLIAM E. DURRETT, WILLIAM E. GLENNON, WILLIAM E. NELSON, WILLIAM F. BAXTER, WILLIAM F. BLUM, WILLIAM F. LAWE, WILLIAM F. STRUB, JR., WILLIAM H. BROWN, JR., WILLIAM H. BURTON, WILLIAM H. CAINE, WILLIAM H. MADDEN, WILLIAM H. EICHENGREEN, WILLIAM H. SADLER, WILLIAM J. BEDFORD, WILLIAM J. HOLDMAN, DDS,

WILLIAM J. MARLIN ESTATE, WILLIAM J. WILLIAMS, WILLIAM JARVIS, WILLIAM JOSEPH WOOD, WILLIAM L. CELLI, WILLIAM L. GREGORY, WILLIAM L. STURGEON, WILLIAM L. WALTER, WILLIAM M. BYRNE, WILLIAM M. GREEN, Doctor, WILLIAM M. MCCUNE, WILLIAM M. MORROW, WILLIAM M. SECOR, WILLIAM M. SCHWARTZ, WILLIAM MACGREGOR, WILLIAM MICHAEL HOPPE, WILLIAM N. TERPSTRA, WILLIAM P. GREEN, WILLIAM P. DONELAN, JR., WILLIAM P. KELLEY, WILLIAM P. PELENSKY, WILLIAM PENNINGTON, WILLIAM Q. CURRAN, WILLIAM S. GORMAN, WILLIAM T. PELLETIER, WILLIAM T. WILKINSON, WILLIAM R. BLAKELEY, M.D., WILLIAM R. HARRIS, WILLIAM R. HOLMES, WILLIAM REINHARD, WILLIAM S. SKEEN, WILLIAM SECOR, WILLIAM SELMAN, WILLIAM STAHL, WILLIAM O. PALMER, WILLIAM P. WRIGHT, WILLIAM W. GOW, WILLIAM & LAURA STAHL, WILLIAM W. STUART, WILLIAM W. VAN DYKE, WILLIAM WITTALL, WILLIE WOOD, WILLIS C. REICH, WILLOW CREEK COUNTRY CLUB, dba Hillcrest Golf & Country Club, WILMA B. MORGAN, WILSON RACQUET SPORTS, WILSON INABINET, WILSON SPORTING GOOD, WIND & RAIN SHIELD, INCORPORATED, WINSTON L. ADAMS, WOODBELL COMPANY LIMITED, WOODBURY CHEMICAL COMPANY, WOODWARD-CLYDE CONSULTANTS, WORKSMAN TRADING CORPORATION, WORLD PAC TRADE CORPORATION, dba Pure Juice, WORLD TRAVEL SERVICE, WORLDWIDE DATA PRODUCTS, INCORPORATED, WP GROUP, dba Word Processing Group, WP LAW, INCORPORATED, WRENN HANDLING, INCORPORATED, WULBERN-KOVAL COMPANY, INCORPORATED, WWD CORPORATION, WYNN'S IGA

XEROX

YASUO JAYSON TERADA, YOICHI HATTORI, YONEX CORPORATION, YONG KIM, YOSHIAKI FUJIMOTO, YOSHIICHI ADACHI, YOUNG FAMILY TRUST, YUH C. YIM

ZEE MEDICAL SERVICE, a division of Boad Seven, Incorporated, ZELLERBACH, a Mead Company, ZENITH TRAVEL, INCORPORATED, ZUISHO HAYASHI

Claimants.

BUREAU OF INDIAN AFFAIRS, CLUB CORPORATION OF AMERICA, F&D PARTNERSHIP, LIMITED, HOTEL ASSOCIATES OF PALM SPRINGS, a California limited partnership and Capitol Hotel Group, hotel associates of Palm Springs, a California limited partnership and capitol hotel group, JOHN TRIANA, KSL RECREATION CORPORATION, LA JOLLA PACIFIC EQUITIES, INCORPORATED AND INLAND PACIFIC REAL ESTATE, INCORPORATED, LAQUINTA MEDICAL/COMMERCIAL PLAZA, LIMITED, MARK GOFF, MIKE MARTIN, MISSION HILLS EQUITY COUNTRY CLUB, INCORPORATED, MORGAN STANLEY REAL ESTATE FUND, L.P., NATIONSBANK INVESTMENT BANKING COMPANY, PALM BEACH POLO CLUB MEMBERSHIP ASSOCIATION, INCORPORATED, R. JENEANE TREACE, STANFORD, RANCH, INCORPORATED, THOMAS E. HEADRICK, TOC, INCORPORATED, a wholly owned subsidiary of Virginia Investment Trusts, TRI-STATE GROUP, INCORPORATED

Respondents,

US Trustee,

Trustee

No. 94-2490
BK-92-77109
CA-92-3548-2-1
BK-91-5818
CA-91-3288-2-1
CA-91-5288-2-1
BK-91-5819
CA-91-3289-2-1
CA-91-5289-2-1
BK-91-5817
CA-91-3290-2-1
CA-91-5290-2-1
BK-91-5816
CA-91-3291-2-1
CA-91-5291-2-1
BK-91-5815
CA-91-3286-2-1
CA-91-5386-2-1
BK-91-5814
CA-91-3287-2-1
CA-91-5287-2-1

CARMEL VALLEY RANCH, a California Corporation, CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation, In Re: LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, a Delaware Corporation, LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, an Oklahoma Corporation, LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, A Delaware Corporation, LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, a Louisiana Corporation, CARMEL VALLEY RANCH, a California Corporation, CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation,

Debtors

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, d/b/a West Beach Tennis Club, d/b/a West Beach Tennis Parking, d/b/a Turtle Point, d/b/a Town Center, d/b/a Osprey Point Golf Course, d/b/a Kiawah Island Resorts, d/b/a Kiawah Island Villa Rental, d/b/a Kiawah Inn, d/b/a Night Heron Park, d/b/a Marsh Point Golf Course, d/b/a Links Golf Course, d/b/a Conference Center, d/b/a East Beach Tennis Center, d/b/a Dune & Lagoon Lodges, d/b/a Club Conference Center, a Delaware Corporation;

LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, d/b/a Oak Tree Golf Club, d/b/a Oak Tree Properties, d/b/a Caston Lumber Company, a/k/a Oakridge Manor, d/b/a Oak Tree Communications, d/b/a Oak Tree Country Club, d/b/a Oak Tree Development, d/b/a Oklahoma Business Investments, Incorporated, d/b/a Oak Tree Estates, d/b/a The Waterford Hotel, d/b/a Redlands, an Oklahoma Corporation;

LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, d/b/a Palm Beach Polo and Country Club, a Delaware Corporation;

LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, d/b/a Oak Tree Realty, d/b/a Oak Harbor Yacht and Country Club, d/b/a Oak Harbor (formerly Eden Isles), d/b/a Landmark Realty, d/b/a Landmark Real Estate, d/b/a Landmark Homes, d/b/a Landmark Asset Management Group, d/b/a LML Real Estate Company, d/b/a Belle Terre Golf and Country Club, a Louisiana Corporation;

LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, d/b/a Mission Hills Resort Condominiums, d/b/a Thermal Nursery, d/b/a Stanford Oaks, d/b/a Sanders Real Estate Company, d/b/a Recreational Resort Marketing Venture, Limited, d/b/a PGA West, d/b/a Oak Valley Country Club, d/b/a Oak Valley, d/b/a Oak Tree Hotels, Incorporated, d/b/a Oak Summit,

d/b/a National Car Rental Agency, d/b/a Moreno Valley Ranch Golf Club, d/b/a Moreno Valley Ranch, d/b/a Moreno Valley Auto Mall, d/b/a Mission Hills Tennis Club, d/b/a Mission Hills Resort Golf Club, d/b/a Mission Hills Resort Condominiums, d/b/a Mission Hills Real Estate, d/b/a Mission Hills Real Estate Company, d/b/a Mission Hills Golf Club, d/b/a Mission Hills General and Administrative Committee, d/b/a Mission Hills Country Club, d/b/a Mission Hills Corporation, d/b/a Mission Hills Company, d/b/a Landmark Special Events, d/b/a Landmark Real Estate Company, d/b/a Landmark Productions, d/b/a Landmark Mortgage Company, d/b/a Landmark Land Golf Company, d/b/a Landmark Event Management, d/b/a Landmark Communications, Incorporated, d/b/a La Quinta National Golf Club, d/b/a La Quinta Leasing, d/b/a La Quinta Hotel Tennis Club, d/b/a La Quinta Hotel Real Estate Company, d/b/a La Quinta Hotel Golf Club, d/b/a La Quinta Hotel Golf and Tennis Resort, d/b/a La Quinta Hotel, d/b/a La Quinta Golf Academy, d/b/a La Quinta Cove, d/b/a La Quinta Air Services, d/b/a LML Real Estate Company, Incorporated, d/b/a LML Mission Hills Corporation, d/b/a LML Construction Co., d/b/a Greenspot, d/b/a Foster Turf Products, d/b/a FTP Wholesale Growers, d/b/a FTP/Bergen Nurseries, d/b/a Dixie Mortgage Company, d/b/a Carmel Valley Ranch Real Estate Company, d/b/a Bergen Nursery, d/b/a Acorn Purchasing, a Delaware Corporation;

CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation;

CARMEL VALLEY RANCH, a/k/a Carmel Valley Ranch Tennis Club, a/k/a Carmel Valley Ranch Resort, a/k/a Carmel Valley Ranch, Incorporated, a California Corporation;

Debtor - Appellees

RESOLUTION TRUST CORPORATION, a receiver (formerly conservator) for Oak Tree Federal Savings Bank

Creditor - Appellee

v.

GERALD G. BARTON JOE W. WALSER, JR., WILLIAM W. VAUGHAN, III, BERNARD G. ILLE,

Claimants - Appellants

JONES, DAY, REAVIS & POGUE, MCGLINCHEY, STAFFORD & LANG, MCNAIR & SANFORD, P.A.,

Parties in Interest

ALPHA NURSERY, INCORPORATED, ARVIDA/JMB PARTNERS, BART BOREN, BERNARDO GOUTHIER, BORAL RESOURCES, INCORPORATED, C. M. HUBBARD & SONS, CECIL ROTH FARMS, COASTAL INSTITUTIONAL DISTRIBUTORS, CRI, INCORPORATED, E. MCGRATH APPAREL COMPANY, ERNIE ZIELINSKI FARMS, FARM CREDIT SERVICES OF SOUTHERN CALIFORNIA, FLORIDA ROWING CENTERS, INCORPORATED, GLEN ROTH FARMS, GLEN ZIELINSKI FARMS, GORDON WHEELER GALLERY, HAYWORTH FARMS, INCORPORATED, HIGH TECH IRRIGATION, INCORPORATED, HOTEL OF PALM SPRINGS, IMAGE NETWORK, INCORPORATED, ITT ADMINISTRATORS, J. J. KREBS & SONS, INCORPORATED, LAIDLAW WASTE SYSTEMS, INCORPORATED, LOUIS L. KOKKELER, M&D MCKAY FARMS, INCORPORATED, MATT ROTH, MIKE THOMPSON, MULLEN FARMS, an Oregon Partnership, PALM BEACH POLO AND COUNTRY CLUB PROPERTY OWNERS' ASSOCIATION, INCORPORATED, PAN AMERICAN LIFE INSURANCE COMPANY, PGA WEST, POHLSCHNEIDER FARMS, INCORPORATED, PRICE WATERHOUSE, PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUDENTIAL INSURANCE COMPANY, INCORPORATED, QUAIL

VALLEY MANAGEMENT, INCORPORATED, QUINN, EMANUEL & URQUHART, SOUTHERN FARM BUREAU, SUNRISE COMPANY, SUSAN VINEYARD, UNSECURED CREDITORS COMMITTEE,

Creditors.

88314 ONTARIO LIMITED, 52ND STREET FARM MARKETS, A&B BUILDING MAINTENANCE, A. BYRON PERKINS, A. C. HOUSTON LUMBER COMPANY, A.C. NEWMAN & COMPANY INSURANCE, A. C. PUMP SERVICE, INCORPORATED, A. D. FRESHOUR, A. J. AMENDOLA, A. LINC LANCET, A. N. SPENCER, A. WALLY SANDACK, A-1 FIRE EQUIPMENT, A-ALADIN TRAVEL, A-Z OFFICE SUPPLY, AAA RENTALS, INCORPORATED, AABACO INDUSTRIES, INCORPORATED, AAR/NEWAY UNIFORM SUPPLY, AB & ASSOCIATES, ABACUS TEMPORARY SERVICES, INCORPORATED, ABLE LAWNMOWER SALES AND SERVICE, ABOUT TRAVEL, INCORPORATED, ABSOLUTE CLEANING COMPANY, ACCENT LANDSCAPING & PAVING, ACE ALTERNATORS, INCORPORATED, ACE HARDWARE, #2786F, ACE PRINTING COMPANY, ACKERLEY AIRPORT ADVERTISING, ACME DISPLAY FIXTURE COMPANY, INCORPORATED, ACME RESTAURANT SUPPLY, ADAM J. MICHAEL, ADOHR FARMS, INCORPORATED, ADRIAN GOLDSTEIN, ADRIAN MARSDEN, ADVANCED AMENITIES, ADVANCED TELECOMMUNICATIONS CORPORATION, ADVANCED TELEPHONE TECHNOLOGY, ADVANCED DRAINAGE SYSTEMS, INCORPORATED, ADVANTA LEASING CORPORATION, AIRBORNE FREIGHT CORPORATION, AJAX OF LOUISIANA, AJF LEASING, INCORPORATED, a division of AJF Warehouse Distributors, Incorporated, AL PACKER FORD WEST, ALAN C. FURTH, ALAN C. NEWMAN, ALAN D. HIURA, DDS, ALAN H. LAZARUS, ALAN G. DAVIS/AGD INVESTMENTS CORPORATION, ALAN G. GRAY, ALAN G. PEDERSEN,

ALAN H. BEYER, ALANNAH SINCLAIRE, ALBERT G. SIMPSON, JR., ALBERT J. STODDART, ALBERT LEGITTINO, ALBERT R. SIMON, ALDO J. TEST, ALEX N. CAMPBELL, ALEX SHERMAN, d/b/a A&S Coffee Services, ALFRED A. LEVIN, ALFRED SHAIN, ALL YOUR NEEDS MET, ALL CLEAR WINDOW CLEANING, INCORPORATED, ALLEN H. OGLANDER, ALLEN O. HUFF, ALLEN FREIDSON, ALLEN MERCHANT, ALLEN NEWTON, M.D., ALLEN T. BROWN, ALLEN W. SHARPE, ALLIE MAE, ALMAR CHEMICAL COMPANY, INCORPORATED, ALOE UP PALMS, ALTA DENA CERTIFIED DIARY, INCORPORATED, ALTERMAN STUDIOS, INCORPORATED, ALVIN H. BLAINE, ALVIN L. RUSSO, ALVIN S. MORROW, M.D., ALYS M. BACHLER, AMBASSADOR FACTORS DIVISION OF FLEET FACTORS CORPORATION, AMERICA'S CHOICE COMPANY, AMERICAN COASTAL DEVELOPMENT CORPORATION, AMERICAN LINEN SUPPLY COMPANY, AMERICAN HOTEL REGISTER COMPANY, AMERICAN EXPRESS TRAVEL RELATED, AMERICAN LUMBER & SUPPLY, ANDERSEN & ASSOCIATES, ANDERSON ARMORED CAR SERVICE, INCORPORATED, ANDREW C. SMITH, ANDREW INGRAM, ANDREW J. FENADY, ANDREW KRISTO, ANDREW L. ANDERSON, ANDREW M. MASCIARELLA, ANDREW P. LOMBARD, ANDREW ROSSI, ANDY ZEHNDER, ANGELICA UNIFORM GROUP, ANHEUSER-BUSCH COMPANIES, ANITA FELLER, d/b/a Anita's, ANITA VORHEES JACKSON, ANNABELLE SAFRAN, ANNANDALE GOLF CLUB, ANNENBERG CENTER AT EISENHOWER, ANNELY M. KLINGENSMITH, ANTHONY G. QUADROS, ANTHONY J. CARR, ANTHONY J. MARTINO, ANTHONY J. PORCELLO, ANTIGUA SPORTSWEAR, INCORPORATED, APPLAUSE, INCORPORATED, APPLIED TECHNOLOGY & MANAGEMENT, INCORPORATED, APPLIED SOIL MECHANICS, INCORPORATED, AQUA-SERV

ENGINEERS, INCORPORATED, ARA SERVICES MAGAZINE & BOOK DIVISION, ARETA B. MCKENZIE TRUST, ARIZONA MANUFACTURING & EMBROIDERY, ARMIN F. STEINER, ARREST A PEST, ARROW LANDSCAPES & MAINTENANCE, INCORPORATED, ART & LETTER SERVICE, ARTESIA IMPLEMENT, ARTHUR B. HORTON, ARTHUR C. LINNEMEYER, ARTHUR C. SCHULER, ARTHUR E. BRANDT, ARTHUR E. NELSON, ARTHUR L. JACOBSON, ARTHUR MAGISTER, ASAP ICE, ASHELY D. HOFFMAN, ASHLAND CHEMICAL, INCORPORATED, ASIAN AMERICAN PARTNERS, ASSIST COMPUTER CONSULTANTS, ASSOCIATED UNIFORM RENTAL & LINEN SUPPLY, INCORPORATED ASSUMPTION PARISH, AT ONCE TEMPORARY SERVICES, AT&T, ATKINSON POOL COMPANY, INCORPORATED, ATLANTIC SERVICES, INCORPORATED, ATLAS COATING COMPANY, INCORPORATED, AUBREY DEVINE, AUREUS LIMITED, AVID SPORTSWEAR, INCORPORATED

B&C TURF PRODUCTS, INCORPORATED, B&C SEAFOOD, INCORPORATED, B&M MAPS, B. D. CHAMAS, B. J. BUCHANAN, B. RENEE HAMEL, BAKER AUDIO, INCORPORATED, BANCBOSTON FINANCIAL COMPANY, BANCROFT-WHITNEY LAW PUBLISHERS, BANKSOUTH, N.A., BANNING ACE HARDWARE 5826S, BARBARA EDEN, BARBARA MARCHITELLI, BARBARA ROGERS, BARNEY J. BELLELI, BARRY M. TAYLOR, BARRY PRESSMAN, BARRY W. GENDELMAN, M.D., BASE DISTRIBUTORS, INCORPORATED, BAUER TIRE INCORPORATED, dba Goodyear Tire Center, BAUSCH & LOMB INCORPORATED, BAYLAUREL CORPORATION, a California corporation, BAYSHORE PUBLISHING GROUP, INCORPORATED, BEACHCOMBERS, INCORPORATED, BEAUMONT SAFE & LOCK, BEAUMONT TIRE & MUFFLER SERVICE, INCORPORATED, BELLE POINT DRAINAGE DISTRICT,

#1, BELLERIVE COUNTRY CLUB, BELLSOUTH ADVERTISING & PUBLISHING COMPANY, BELLSOUTH COMMUNICATION SYSTEMS, INCORPORATED, BEN PON, BEN HOGAN COMPANY, BEN HARRIS, BEN E. KEITH FOOD COMPANY OF OKLAHOMA, BEN ARNOLD COMPANY, INCORPORATED, BEN F. NIEMAN, BEN RASKIN, BENTLEY PRITSKER, BENTON'S PAINT, INCORPORATED, BERIT FALGE, BERKELEY ELECTRIC COOPERATIVE, INCORPORATED, BERKLEY DAVID DESIGNS, BERLE MANUFACTURING COMPANY, BERMUDA DUNES COUNTRY CLUB, BERNARD A. SCHLIFKE, BERNARD DICKENS, BERANRD E. MCKUNE, BERNARD P. KIRKPATRICK, BERNICE BUSH-POPE, BERNIE'S CUSTOM CLEANING, INCORPORATED, BERT FULLER, BETSY B. BENNETT, BETTIE GRESHAM YODER, fka Bettie Gresham Glover, BETTY BELDEN PALMER, BEVERLY ANN RILEY, BEVERLY E. HAMILTON, BEVERLY F. DAROCZY, Trustee, BIG "A" AUTO PARTS, INCORPORATED, BIG CANYON COUNTRY CLUB, BIGGERS BROTHERS, INCORPORATED, BILL D. CATES, BILL D. SAXON, BILL HAWKS, BILL MORRIS, BILL SIMPKINS, dba Re'Al Sportswear, BILL SLIFER, BILL STUBBS, BILLY G. FIELDER, BILLY R. AUSTIN, BILLYE R. AUSTIN, BILLY'S PINESTRAW, BIOTECH PRODUCTS, INCORPORATED, BJARNE QVALE, BLACKIE SERVICES, BLANCHARD MACHINERY COMPANY, BLP MOBILE PLANT – LA PLACE, BLUE FLAME GAS COMPANY, INCORPORATED OF CHARLESTON, BMI SYSTEMS CORPORATION, BOAST, INCORPORATED, BOB G. ALEXANDER, BOB MANFRE, BOBBIE PRECKWINKLE, BOBBY M. CLARK, BOBBY PEULAUD, BOBWHITE SPECIALISTS, INCORPORATED, BOCA TIRES, INCORPORATED, BOHEMIAN DISTRIBUTING COMPANY, BOHICKET YACHT CHARTERS, BOMARC PAPER & PACKAGING INCORPORATED, BOOSE,

CASEY, CIFLIN, LUBITZ, MARTIS, MCBANE & O'CONNELL, BORDELON & HILL, BOSTON TRADING LIMITED, INCORPORATED, BOUCHEREAU OIL COMPANY, BOURG SIGNS, BOYD L. JEFFERIES, BOYNTON PUMP & IRRIGATION SUPPLY, BRADFORD A. CARL, BRADFORD KING KROHA, BRADLEY HEATING & AIR CONDITIONING, INCORPORATED, BRADLEY K. PENCE, BRAUN/A-1 LINEN SERVICE, BRENT S. ENRIGHT, BRIAN MILLEMAN, BRIAN O. SHANNON, BRIAN W. HOLMES, BRIGMAN FOODS, INCORPORATED, BRITISH OPEN FOR J&F, BROWNIE'S BLUEPRINT COMPANY, INCORPORATED, BROWNING FERRIS INDUSTRIES, BRUCE A. KAPLAN, BRUCE C. ANDERSON, BRUCE C. RICHARDS, BRUCE D. GRAY, BRUCE G. SCHWARTZ, BRUCE GALVANEK, BRUCE J. HOESMAN, BRUCE L. DOW, BRUCE M. GALLAHER, BRUCE R. BAUMANN, BRUCE ROLLICH, BRUCE ROTHMAN, BRUCE S. CRAMPTON, BRUCE W. FRANKLIN, BRUNO A. GIORDANO, BRUNO BURKLIN PHOTO, BRYAN R. GERSTEL, BRYANT FINANCIAL CORPORATION, BUCKHEAD BEEF COMPANY, INCORPORATED, BUD D. KLEIN, BUILDERS SQUARE, BURBERRY/BIDERMANN INDUSTRIES, BURBERRYS WHOLESALE LIMITED, BUSH BROTHERS PROVISION COMPANY, BUSINESS BASICS, BUTLER BOX & STAKE, INCORPORATED, BUTLER NATIONAL GOLF CLUB, BUTLER PAPER COMPANY, BUTTERFLY FLOWER SHOP, BYRON RONALD MILLER

C&H DESIGNS, C&S FURNITURE RENTALS, C&S SOVRAN COMMERCIAL CORPORATION, fka C&S Commercial Corporation, C. ANNETTE HARVEY, C. COURTNEY WOOD, C. DWAINE CARVER, C. E. SINGLETON, C. KENNETH SUGLER, C. MARVIN MAY, C. R. BROWN, C. W. SPANGLE, CABLE & CONNECTOR WAREHOUSE, INCORPORATED, CACTUS COVE SEAFOODS, INCORPORATED, CALI-FAME OF LOS ANGELES, INCORPORATED, CALIFORNIA COUNTRY

CLUB, CALLAWAY GOLF, CALYX & COROLLA, INCORPORATED, CAMELOT NURSERIES, INCORPORATED, dba Mountain States Wholesale Nursery, CAMPBELL'S LIGHTING & SIGNS, CANNINGS BREA HARDWARE, INCORPORATED, CANNINGS SEA FOODS, INCORPORATED, CAPITAL FACTORS, INCORPORATED, CARCOMM, INCORPORATED, CARDINAL PAPER COMPANY, CARL A. JONSON, CARL E. BROOKS, CARL EUGENE FRANKLIN, CARL T. WILLINGHAM, CARLOS LEITE, CARLSON TRAVEL NETWORK, CARMEL VALLEY RANCH REAS ESTATE COMPANY, CAROL B. PLUMMER, CAROL SLIFER, CAROLINA GOLF CAR SYSTEMS, CAROLINA MOUNTAIN WATER, INCORPORATED, CAROLINA RETAIL PACKAGING, INCORPORATED, CAROLINA SOUND COMMUNICATIONS, CAROLINA SUPPLIES & CEMENT COMPANY, INCORPORATED, CAROLINA TURF FARMS, INCORPORATED, CAROLINAS CHAPTER – M.P.I., CAROLYN CRIST, CAROLYN H. HUNT, CARR EXTERMINATING COMPANY, CARR PAPER COMPANY, INCORPORATED, CARRIE SMITH, CARRIER CORPORATION, CARYL E. ORANGES, CATHEDRAL CITY POSTAL COMPANY, CATHERINE G. CROMER, CAVANAUGH ELECTRIC, CELLULAR ONE, CENTRAL CONTROL COMPANY, CENTRAL OKLAHOMA PRODUCE SERVICE, CHANDLER CONSTRUCTION COMPANY, CHARLENE DIMOND, CHARLES CHIPS OF PALM BEACHES, INCORPORATED, CHARLES A. BONNETT, Doctor, CHARLES A. POTTER, CHARLES B. MONTGOMERY, CHARLES D. EDISON, CHARLES D. SHUBIN, CHARLES E. NOREEN, CHARLES F. ADAMS, CHARLES F. WEHRLY, CHARLES F. WENDT, CHARLES GILBERT COLBY, CHARLES GIORNESTO, JR., CHARLES H. BOOTH, JR., CHARLES H. BROCK, CHARLES HARRIS, CHARLES HOUGH, CHARLES KAMPINSLI, CHARLES L. MCCUBBINS, CHARLES L. RUPPERT, III, CHARLES M. MCCORKLE, CHARLES MERTEN, dba Studs & Duds,

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C&H DESIGNS, C&S FURNITURE RENTALS, C&S SOVRAN COMMERCIAL CORPORATION, fka C&S Commercial Corporation, C. ANNETTE HARVEY, C. COURTNEY WOOD, C. DWAINE CARVER, C. E. SINGLETON, C. KENNETH SUGLER, C. MARVIN MAY, C. R. BROWN, C. W. SPANGLE, CABLE & CONNECTOR WAREHOUSE, INCORPORATED, CACTUS COVE SEAFOODS, INCORPORATED, CALI-FAME OF LOS ANGELES, INCORPORATED, CALIFORNIA COUNTRY

CLUB, CALLAWAY GOLF, CALYX & COROLLA, INCORPORATED, CAMELOT NURSERIES, INCORPORATED, dba Mountain States Wholesale Nursery, CAMPBELL'S LIGHTING & SIGNS, CANNINGS BREA HARDWARE, INCORPORATED, CANNINGS SEA FOODS, INCORPORATED, CAPITAL FACTORS, INCORPORATED, CARCOMM, INCORPORATED, CARDINAL PAPER COMPANY, CARL A. JONSON, CARL E. BROOKS, CARL EUGENE FRANKLIN, CARL T. WILLINGHAM, CARLOS LEITE, CARLSON TRAVEL NETWORK, CARMEL VALLEY RANCH REAS ESTATE COMPANY, CAROL B. PLUMMER, CAROL SLIFER, CAROLINA GOLF CAR SYSTEMS, CAROLINA MOUNTAIN WATER, INCORPORATED, CAROLINA RETAIL PACKAGING, INCORPORATED, CAROLINA SOUND COMMUNICATIONS, CAROLINA SUPPLIES & CEMENT COMPANY, INCORPORATED, CAROLINA TURF FARMS, INCORPORATED, CAROLINAS CHAPTER - M.P.I., CAROLYN CRIST, CAROLYN H. HUNT, CARR EXTERMINATING COMPANY, CARR PAPER COMPANY, INCORPORATED, CARRIE SMITH, CARRIER CORPORATION, CARYL E. ORANGES, CATHEDRAL CITY POSTAL COMPANY, CATHERINE G. CROMER, CAVANAUGH ELECTRIC, CELLULAR ONE, CENTRAL CONTROL COMPANY, CENTRAL OKLAHOMA PRODUCE SERVICE, CHANDLER CONSTRUCTION COMPANY, CHARLENE DIMOND, CHARLES CHIPS OF PALM BEACHES, INCORPORATED, CHARLES A. BONNETT, Doctor, CHARLES A. POTTER, CHARLES B. MONTGOMERY, CHARLES D. EDISON, CHARLES D. SHUBIN, CHARLES E. NOREEN, CHARLES F. ADAMS, CHARLES F. WEHRLY, CHARLES F. WENDT, CHARLES GILBERT COLBY, CHARLES GIORNESTO, JR., CHARLES H. BOOTH, JR., CHARLES H. BROCK, CHARLES HARRIS, CHARLES HOUGH, CHARLES KAMPINSLI, CHARLES L. MCCUBBINS, CHARLES L. RUPPERT, III, CHARLES M. MCCORKLE, CHARLES MERTEN, dba Studs & Duds,

CHARLES N. VAUGHN, CHARLES R. WINTERROWD,CHARLES V. KLINE, CHARLES GRENADIER, CHARLES P. FALCONE, CHARLES PIUS, CHARLES R. REED, CHARLES R. STARR, CHARLES SCHWARTZ, CHARLES SNYDER, CHARLES WEISBERG, CHARLESTON PAPER COMPANY, CHARLESTON NEWS COMPANY, CHARTER GOLF, INCORPORATED, CHEMDRY OF COACHELLA VALLEY, CHERRY VALLEY SANITATION SERVICE, INCORPORATED, CHERYL M. HUDAK, CHERYL SAVAGE, CHESTER R. SAZENSKI, CHIEF SIGN CRAFTS, CHONG HOON KIM, aka (Tom) Chong Hoon Kim, CHRIS M. PEDERSEN, CHRIS MALETIS, III, CHRIS PALLES, CHRISTINE & ROB'S, INCORPORATED, CHRISTINE CORONA, CHUNG BAE, CHURCH DIALING COMPANY, INCORPORATED, CHURCH CREEK, NURSERY, INCORPORATED, CIMTEX, INCORPORATED, dba Roche, CINDY BAKER, CINDY GUILLOT, CINDY SEBALD, CITIBANK LEASING CORPORATION, fka Caribank Leasing Corporation, CITIZENS INVESTMENT CORPORATION, CITY OF BREA, CITY OF MORENO VALLEY, CITY OF OKLAHOMA WATER RESOURCES DEPARTMENT, CITY OF EDMOND OKLAHOMA, CITY ELECTRIC, INCORPORATED, CITY OF RANCHO MIRAGE, CITY OF TULSA, CITY OF OKLAHOMA, CITY SEA FOODS, INCORPORATED, CLAIR E. LEEDOM, CLARENCE H. FOSSIER, M.D., CLARENCE J. FERRARIE, JR., CLASSIC APPAREL, CLASSY BASKETS & EDIBLES, CLAUDE ELLENA, CLAYTON D. RUSSELL, CLEANING WIZARDS, CLIFF N. MORTENSEN, CLIFFORD A. MORTON, CLIFFORD C. CRANDALL, CLIFFORD H. EVANS, CLIFFORD L. GANT, CLIFFORD SEWELL, CLIPPER UNLIMITED, INCORPORATED, CLUB CAR, INCORPORATED, CNA INSURANCE COMPANY, dba Transportation Insurance Company, COACHELLA VALLEY MOSQUITO ABATEMENT DISTRICT, COACHELLA VALLEY PUMP & SUPPLY, INCORPORATED, COACHELLA VALLEY WATER

DISTRICT, COASTAL VIDEO REPAIR, COATS VIYELLA, COBRA GOLF, INCORPORATED, COFFEE SERVICE COMPANY, COLE HAAN, COLLEEN ANNE GALAVIZ, COLLEGE HOUSE, INCORPORATED, COLORADO LEISURE SPORTSWEAR CORPORATION, COLUMBIANKNIT, INCORPORATED, COM SER COMPANY, COMMERCIAL FACTORS OF MINNESOTA, COMMERCIAL LINEN SUPPLY, COMPLETE BUSINESS SYSTEMS, INCORPORATED, COMPUTERIZED SECURITY SYSTEMS/WINFIELD LOCKS, INCORPORATED, COMPUTERLAND, COMPUTERS FOR TRACTS, INCORPORATED, CONAGRA, INCORPORATED, dba Mapelli Food Distribution Company, CONCO FOOD SERVICE, CONNIE D. WILSON, CONNIE P. SIEGAL, CONNIE W. JOHNSON, CONRAD LOPES, CONSOLIDATED WHOLESALE COMPANY, CONSOLIDATED FOOD SERVICE COMPANIES, CONSOLIDATED ELECTRICAL DIST., INCORPORATED, CONTINENTAL BAKING COMPANY, COOPERRIDER FAMILY TRUST, COR O. 1 REFINERY, CORBIN, LIMITED, CORRINE PATTON MARTIN, COUNTY CHEMICALS OF RIVERSIDE COUNTY, COUNTY OF RIVERSIDE, TREASURER TAX COLLECTOR, COUNTRY CLUB PUBLICA, County Club Publications, Incorporated, COUNTRY CLUB SALES, COVINGTON COUNTRY CLUB, COVINGTON TECHNOLOGIES, COWIN E. ROBERT, CP COMMUNICATIONS, INCORPORATED, CRAIG E. KREIBICH, CRAIG E. VOLLHABER, CRAIG RIDENOUR, CREIGHTON LACEY-BAKER, CRAVENS AUTO ELECTRIC COMPANY, CROSS CREEK APPAREL, INCORPORATED, CTI/CREATE THE IMAGE, INCORPORATED, CULLIGAN WATER CONDITIONING, CURTIS F. WAHL, CURTIS L. NORMAN, CUSACK WHOLESALE MEAT COMPANY, CUSTOM GOLF CLUBS, CYNTHIA L. BUSBY, CYPRESS ELECTRICAL CONTRACTOR, INCORPORATED, CYRK, INCORPORATED

D&V CARTING INCORPORATED, D&S REBUILDERS, INCORPORATED, D. A. FROMDAHL, D. ARTHUR SANCHEZ, D. B. MCLELLAN, D. C. VIENT, D. EUGENE MOENCH, D. GENE MCCRORY, D. MARK GOODING, D. MICHAEL JONES, D. WENDELL DICKEY, DAILEY-FOTORNY, INCORPORATED, DAIWA GOLF COMPANY, DALE A. NORGREN, DALE HAASE, DALE HUSS, DALE WIGLEY, DALE NORERENN, DAN WALDOCH, DAN J. AGNEW, DAN J. REEVES, DAN L. CARLIN, DAN W. LYONS, DANIEL E. WILKEN, DANIEL MILOSEVICH, DANIEL P. DECLARK, DANIEL W. SHEPARDSON, DANIEL V. WALDOCK, DANKA LEASING, DANKA BUSINESS SYSTEMS, INCORPORATED, DANN DEE DISPLAY FIXTURES, DANNY S. LASKOWITZ, DARLA J. KERSHAW, DARLYN DESIGNS, INCORPORATED, DARRELL J. WILLIAMS, DARRYL ELLINGSON, DAVE YOUNGQUIST, DAVID & BARBARA SENESCU, DAVID A. MARKMAN, M.D., DAVID ARCHER BAND, DAVID BRIAN BOGGS, DAVID C. FARR, DAVID L. HOTT, DAVID L. STEFFY, DAVID MARKEL, DAVID E. BURTON, DAVID E. PALM, DAVID FARNELL, DAVID H. HAYES, DAVID J. DEMAINE, DAVID J. MONAGHAN, DAVID J. STORSTAD, DAVID L. CSNIKSHANK, DAVID L. MITCHELL, DAVID L. WELCH, DAVID ROBERT CLARK, DAVID R. FOSTER, DAVID R. SANDBERG, DAVID C. JAMES, DAVID C. MALPASS WAREHOUSE, INCORPORATED, DAVID DAVIES, DAVID E. TIERNEY, DAVID FRANCESCHINI, DAVID ARCHER, DAVID M. CHAPMAN, DAVID S. LEWIS, DAVID SMITH/M O M/ATLAS CAPITAL, DAVID T. SARI, DAVID W. FLEMING, DAVID WILLIAM RALSTON, DAVIS PIPE & SUPPLY, INCORPORATED, DAVIS & COMPANY, DE CASTRO, WEST, CHODOROW & BURNS, INCORPORATED, DEAN BOWERS FARMS, DEAN SPALDING, DEBBIE WALKER, DEBRA ANN HILL, DEBRA TURF AND INDUSTRIAL, DECRATREND CORPORATION, DEE'S GRAPHIC SUPPLY, DEGESHC AMERICA,

INCORPORATED, DEL MONTE AVIATION, INCORPORATED, DELI DELITES DISTRIBUTING COMPANY, DELTA AIRLINES, INCORPORATED, DEMPSEY MORK, DENNIS A. ALEKEL, DENNIS E. BALE, DENNIS EDWARD NEUSHUTZ, DENNIS R. SIBSON, DERRICK W. BROWN, DDS, DERRYL COUSINS, DESERT BUSINESS MACHINES, DESERT FIRE EXTINGUISHER COMPANY, INCORPORATED, DESERT GOLF DISTRIBUTORS, INCORPORATED, DESERT HORIZONS, INCORPORATED, DESERT PRINTING COMPANY, INCORPORATED, DESERT STEAM CLEANING COMPANY, DEVANT, LIMITED, DEVOE & RAYNOLDS, DEWE ROGERSON, INCORPORATED, DIANA C. LA PIERRE, DIANE N. SAUNDERS, DICK LYTLE, DICK W. BOYCE, DICK'S TIRE MART, DICK'S VW FOREIGN & DOMESTIC, DISCOUNT HARDWARE, DIVOTS SPORTSWEAR COMPANY, DIXIE ELECTRONICS, INCORPORATED, DIXIENSURANCE, INCORPORATED, DIXON TRAVEL AGENCY, DON D. TOBEY, DON HAMBLIN, DON & HEIDI BROWN, DON JONES, dba Mesa Lawn Maintenance, DON K. EDEN, DON R. HAGLER, DON WADE, DONALD A. BENNETT, DONALD A. BUNCH, DONALD A. DONOVAN, DONALD A. PELTON, DONALD A. LEWIS, DONALD A. PELTON, DONALD A. WHITNEY, DDS, DONALD BOGDON, DONALD CISNEY, DONALD D. DOTY, M.D., DONALD D. RANDALL, DONALD DAVIDSON, DONALD E. FOLEY, DONALD G. ELLIS, DONALD G. WHITMAN, DONALD J. HOLM, DDS, DONALD J. MCGLYNN, DONALD J. TROY, DONALD KELLEHER, DONALD L. JEFFERS, DONALD L. ROBINSON, DONALD L. WILKERSON, DONALD R. MARKLAND, DONALD R. REISFIELD, DONALD R. ROBINSON, DONALD R. WADE, DONALD RAY CHASE, DONALD S. LIEBMAN, DONALD S. MACKINNON, DONALD T. BELDOCK, DONALD W. MANLOWE, DONNA WICKSELL, DORI G. CREE, DORIS SCHAFFER, DOROTHY NADINE PACE, DOUGLAS A.

WILLIS, DOUGLAS B. MCLELLAN, DOUGLAS K. DUSENBURY, DOUGLAS P. VELING, DOUGLAS R. MORRICE, DOUGLAS VIENT, DOUGLAS W. FLATT, DOUGLAS WOOD & ASSOCIATES, INCORPORATED, DOWDLE, INCORPORATED, dba General Air, DOW JONES & COMPANY, INCORPORATED, DR. JAMES G. SUNDERMAN, DR. & MRS. JAMES S. MANION, DRI-TEC, INCORPORATED, dba Auto Flow & Systematic Services, DUANE A. LONG, DUANE R. JACOBS, DUANE TERRY COMPANY, INCORPORATED, DUNCAN INSTITUTIONAL FOODS, DUNLOP SLAZENGER CORPORATION, DUNMORE HOMES OF SOUTHERN CALIFORNIA, DURHAM HOSIERY MILLS, INCORPORATED, DURHAM MEAT COMPANY, DURWARD A. LYON, DURWARD A. YOUNGBLOOD

SMITH FIRE SUPPRESSION, INCORPORATED, SOLLY ROBINS, SOMERS MARKETING, INCORPORATED, SOONER AIRGAS INCORPORATED, SOONERS AND COMPANY, SOSMETAL PRODUCTS, INCORPORATED, SOUTH FLORIA PGA, SOUTH CENTRAL SECTION OF THE PGA, INCORPORATED, SOUTH CENTRAL BELL TELEPHONE COMPANY, SOUTH STAR PRODUCE, SOUTH CAROLINA TAX COMMISSION, SOUTHEAST TIRE & SERVICE, INCORPORATED, SOUTHEASTERN PROTECTION SERVICES, SOUTHEASTERN SURVEYING, INCORPORATED, SOUTHERN BELL TELEPHONE COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN FARM BUREAU, Southern Farm Bureau Insurance Company, SOUTHERN LUMBER & MILLWORK CORPORATION, SOUTHLAND SIGNS & DESIGNS, SOUTHWELL LABORATORY, INCORPORATED, SOUTHWEST AQUATICS (CHEM-GRO CORPORATION), SOUTHWEST IRRIGATION COMPANY, SOUTHWESTERN STATIONERS, INCORPORATED, SOUTHWESTERN BELL TELEPHONE COMPANY,

SPALDING, INCORPORATED, SPEC TECH, INCORPORATED, SPECIAL EDITIONS PUBLISHING, SPECIALTIES, INCORPORATED, SPECIALTY GOLF COURSE SUPPLIES, SPEEDO/WHITE STAG SKI DIVISIONS OF S. ACQUISITIONS CORPORATION, SPEEDY DELIVERY SERVICE, SPENCER BROWN, SPENCO MEDICAL CORPORATION, SPORTIF, USA, SPRING ELECTRIC, INCORPORATED, ST JOHN THE BAPTIST, ST. TAMMANY DRAINAGE DISTRICT #1, ST. TAMMANY CLERK OF COURT, STAN A. SUTHERLAND, STAN DUDAS, STANDARD TRUCKING COMPANY, STANFORD SANOFF, STANFORD TISCHLER, STANLEY A. BEIDEMAN, STANLEY E. BLAIR, STANLEY ROSS, STANELY SCHAFFER, STATE BOARD OF EQUALIZATION, STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, STATE OF FLORIDA, STATE OF LOUISIANA, STATE OF LOUISIANA DEPARTMENT OF REVENEU AND TAXATION, STEPHANIE A. BROWN, STEPHANIE B. GEBERT, STEPHEN BROWN ASSOCIATES, INCORPORATED, STEPHEN C. GROAT, STEPHEN KIDDOO, STEPHEN L. MCELRATH, STERLING CALL, STERLING MOUNT, STERLING R. LOUNT, STEVE C. DUNE, STEVE CHARTON, STEVE CONNOLLY SEAFOOD COMPANY, INCORPORATED, STEVE DIMOND, STEVE GFELLERS, STEVE H. ADAMS, STEVE M. ALBERS, STEVE RADFORD, STEVEN A. BERNFELD, STEVEN A. RICE, STEVEN B. GREENFIELD, STEVEN C. BRYANT, STEVEN H. ADAMS, STEVEN O. SPAULDING, STEVEN SAPOS, STEVE'S OFFICE SUPPLY, STEVE'S WHOLESALE DISTRIBUTORS, INCORPORATED, STILLWATER COUNTRY CLUB, STOCKWELL & BINNEY, STOFFEL SEALS CORPORATION, STRAHORN LANDSCAPING COMPANY, STRATTON R. EASTER, M.D., STAN A. SUTHERLAND, STREETS, INCORPORATED, STROBEL TIRE #3, STROEBE, ZINE & ASSOCIATES, STUART CASE, STUART B. WILSON, SULLIVAN ELECTRIC & PUMP, INCORPORATED, SUMTER SMALL

ENGINE, INCORPORATED, SUN MOUNTAIN SPORTS, INCOPRORATED, SUN REFINING & MARKETING COMPANY, SUN WORLD DISTRIBUTORS, SUN COMPANY, INCORPORATED, SUNBELT COCA-COLA BOTTLING COMPANY, INCORPORATED, SUNDANCE LIGHTING, SUNDERLAND OF SCOTLAND, SUNNYMEAD HARDWARE, SUNNYSIDE FARMS, SUNRISE DESERT PARTNERS, SUNRISE FORD TRACTOR COMPANY, SUNSHINE SAFE & LOCK, SUNSHINE GOLF, INCORPORATED, SUNSHINE EQUIPMENT COMPANY, INCORPORATED, SUPERIOR OFFSET, INCORPORATED, SUPERIOR PIPELINE, SUSAN J. ABRAHAM, SUSAN VINEYARD, SWEENEY, INCORPORATED, SWIFT TRANSPORTATION COMPANY, INCORPORATED, SWINGTRAC INCORPORATED, SYSCO FOODS SERVICES OF L.A., INCORPORATED

T&A MEATS, INCORPORATED, T&R LUMBER COMPANY, INCORPORATED, T. CARRIC JORDAN, T. Y. ROY, TACKERIA, TACOSA COUNTRY CLUB, INCORPORATED, TAD HANKEY, TADAAKI, TADAAKI & HARUMI SHIMAMOTO, TAKAO TAKEDA, TEAM EFFORT INCORPORATED, TECHSTYLES, TED P. MARTENS, TEE-2-GREEN INCORPORATED, TENNIS SUPPLY, TERRA INTERNATIONAL, INCORPORATED, TERRENCE A. ALLEN, TERRANCE L. COSGROVE, TERRENCE A. WESTERHOF, TERRENCE M. MCCARTHY, TERRY G. TAYLOR, TERRY JOLLEY, TERRY PANTUSO, TERRY WILKENSON, TEXACE INCORPORATED, TEXACO OF SOUTH CAROLINA, INCORPORATED, TEXAS POLO EQUIPMENT, TEXAS SOD HARVESTING EQUIPMENT, INCORPORATED, TEXTRON FINANCIAL INCORPORATED, THE GLIDDEN COMPANY, THE HOFFMAN COMMERCIAL GROUP, INCORPORATED, dba Hoffman's Chocolate Shoppes, THE LAMAR INCORPORATED, THE CHALONE WINE GROUP, LIMITED, THE MADDEN COMPANY, THE ALMARK COMPANY, THE ATLANTA JOURNAL, THE DAILY COMET, THE

GLENNON LIVING TRUST OF 1987, THE HAAGEN-DAZS COMPANY, INCORPORATED, THE HOME DEPOT, INCORPORATED, THE TIMES PICYUNE PUBLISHING CORPORATION, THE MEMBERS OF LAQUINTA HOTEL GOLF MEMBERS ASSOCIATION, jointly and severally, THE EUREKA COMPANY, THE LAKE DOCTORS, INCORPORATED, THE CAROLINA EXCHANGE, THE DENMAN COMPANY, INCORPORATED, THE DOOR CENTER, THE EDIT CENTRE, THE LOCK SHOP, INCORPORATED, THE NELSON PRINTING INCORPORATED, THE OLYMPIC CLUB, THE PAPER STORE, THE PHOENIX INSURANCE COMPANY, THE PLANT MART, THE RANCH COUNTRY CLUB, THE RUG AND CARPET OUTLET, INCORPORATED, THE COPIER STORE, THE LONG TERM CREDIT BANK OF JAPAN, LIMITED, THE MUSKOGEE COUNTRY CLUB, INCORPORATED, THE PRINT SHOP, INCORPORATED, THE SEVEN-UP COMPANY, THE STANDARD REGISTER COMPANY, THE TRAVELERS INSURANCE COMPANY, THE GOOD LIFE PEOPLE, INCORPORATED, THE WATERFORD HOTEL, THEODORE WILLIAM WITALIS, THERMAL PRODUCTS, INCORPORATED, THOMAS A. SEATON, THOMAS C. SIFFERMAN, THOMAS C. SWENDSON, THOMAS D. GRIFFIN, THOMAS D. NOBLE, THOMAS DREW MURPHY, THOMAS E. HEADRICK, THOMAS E. KENDALL, THOMAS E. PELINO, THOMAS F. CROSBY, JR., THOMAS F. MURPHY, THOMAS G. MOFFAT, THOMAS G. MOORE, THOMAS H. JAMISON, THOMAS J. CALLAN, THOMAS J. CULLIGAN, THOMAS J. MACKIMM, THOMAS J. MAZELIN, THOMAS K. MAHONEY, THOMAS M. BEGG, THOMAS MALETIS, THOMAS MINICHIELLO, THOMAS P. LEACH, THOMAS P. PETERS, THOMAS R. CARSON, THOMAS R. CULLINAN, THOMAS ROSENQUIST, THOMAS S. WILSON, THOMAS V. GIRARDI, THOMAS W. BECK, THOMAS W. O'GWYNN, THOMAS W. PURTZER ENTERPRISES,

INCORPORATED, THOMAS WILLETTE, THOMPSON PUMP & WELLPOINT SYSTEMS, INCORPORATED, THOMSON NEWSPAPER, INCORPORATED, dba The Advertiser, THREE OAKS LANDSCAPE NURSERY, INCORPORATED, TIM ASARO, TIMBERLAKE COUNTRY CLUB, TIME & SOUND, INCORPORATED, TIMOTHY C. BLACK, TIMOTHY J. SMITH, TIMOTHY L. SKOGEN, TLC FLORIST & GREENHOUSE, INCORPORATED, TLS PARTNERSHIP, TOBY C. PAGE, TODD R. KIRSCHNER, TODD STEINER, TOM C. H. KIM, TOM HOCH INTERIOR DESIGNS, INCORPORATED, TOM KELLY, TOM MACKINNON, TOM R. MCGANNON, TOM ROSENQUIST, TOMCO CHEMICALS, TOMMY ARMOUR GOLF COMPANY, TOMMY'S DESIGNS, TOMS RIVER COUNTRY, TONY NAKAZAKI, TOP MATERIALS DISTRIBUTING, INCORPORATED, TOPS N BARRICADES, INCORPORATED, TORRENCE'S FARM IMPLEMENT, TOTES, INCORPORATED, TOUCAN HATS & ACCESSORIES, TOYS BY DAPHNE, INCORPORATED, TRAVEL NETWORK, TRAVEL RESOURCES MANAGEMENT GROUP, INCORPORATED, TRAVEL AGENTS INTERNATIONAL, TRAVEL MART, TRAVEL TALES, INCORPORATED, TRAVELERS INSURANCE, TRAYCO, INCORPORATED, TRI PARISH TROPHIES, TRI-COUNTY ICE & FUEL COMPANY, TRI-STATE GROUP, INCORPORATED, TRIANGLE DISTRIBUTING COMPANY, INCORPORATED, dba Heimark Distributing Company, TRIDENT PRODUCTIONS, INCORPORATED, TROCKI ENTERPRISES, INCORPORATED, TROJAN BATTERY COMPANY, INCORPORATED, TROPHIES BY EDCO, INCORPORATED, TROPICAL PLANT DESIGN, INCORPORATED, TRUST COMPANY BANK, TRYGVE B. LODRUP, TULSA CLUB SUPPLY, TURF SEED, INCORPORATED, TURFMAKERS, INCORPORATED, dba The Cameron Company, TWIGHT FAMILY TRUST, TWO LAKES PARTNERS, U. S. BATTERY-CORONA, U. S.

LINC, INCORPORATED, UNIFORMS TO YOU, UNIGLOBE CAROLINA TRAVEL, UNIJAX, UNION BANK, UNION SEA FOODS, INCORPORATED, UNISA AMERICA, INCORPORATED, UNISYS CORPORATION, UNISYS FINANCE CORPORATION, UNITED ARTISTS REALTY COMPANY, UNITED BANKCARD, INCORPORATED, UNITED PARCEL SERVICE, UNITED SPECIALTIES, UNITED STATES POLO ASSOCIATION, UP FRONT DESIGNS, INCORPORATED, US CABLE, US SPRINT COMMUNICATIONS COMPANY, US POSTAL SERVICE, USA TODAY, USG SOUTHEAST, UTILITY AIR CONDITIONING, INCORPORATED

V. B. ANDERSON COMPANY, VAHE SIMONIAN, VALLEY HARVESTING, INCORPORATED, VALLEY OFFICE EQUIPMENT, INCORPORATED, VALLEY WIDE EQUIPMENT RENTALS & SALES, VAN REX GOURMET FOODS COMPANY, INCORPORATED, VAN WATERS & ROGERS, INCORPORATED, VANCE C. MINTER, VELDA FARMS, INCORPORATED, VELDA M. APPLEBEE, VENDOME HEADWEAR, VERLA C. BROWNING, VERNON JUERGENS, VERNON M. LEWIS, VERNON R. VERON, VICTOR H. SCHOLFIELD, VIGORO INDUSTRIES, INCORPORATED, VIKING AUTO CENTER, INCORPORATED, VIKING TRUCK TIRE CENTER, VILLAGE GARDEN, VILLIO ENTERPRISES, INCORPORATED, dba Imperial Printing, VINCENT COSMO TAURMINA, VINCENT J. SCHREIBER, VINCENT LENNON, VIRGIL C. MOE, VIRGINIA COUNTRY CLUB, VOSS ELECTRIC SUPPLY COMPANY

W. D. SCOTT GROUP, INCORPORATED, W. E. DUFF, Doctor, W. E. MITCHELL, W. FILLMORE WOOD, JR., W. H. CAINE, W. H. DAUM, JR., W. H. WOLFF, W. JAMES SAUL, W. L. SUTTON COMPANY, W. P. LAW, INCORPORATED, W. ROBERT WYMAN, W. STEWART THOMPSON, W. W. CAINE, W. W. GRAINGER, INCORPORATED, W. W. SMITH COMPANY, WALKER H.

STRAUS, WALLACE COMPUTER SERVICES, INCORPORATED, WALLACE J. GROWNEY, WALLACE OSBURN LAUB TRUST, WALT OSGOOD, WALTER PALMER STUDIO, WALTER PALMER, WALTER BROWER, WALTER A. LOCKER, WALTER B. CHAHANOVICH, WALTER C. LORENZEN, WALTER DALE ABRAHAM, WALTER E. WICMOT, WALTER F. COMBS, WALTER ISING, WALTER J. OSGOOD, WALTER J. PARKER, WALTER J. PORTER, WALTER L. PALMER, WALTER M. SCHROEDER, WALTER PELENSKY, WARD R. YOUNG, WARREN DRIVER, WARREN F. HOFFMAN, WARREN S. WEXLER, WARREN SQUIRES, WASHINGTON FLOOR COVERING, INCORPORATED, WASTE MANAGEMENT OF CHARLESTON, WASTE MANAGEMENT/PALM DESERT DISPOSAL, WATER SERVICES COMPANY, WATER UTILITIES SERVICES, INCORPORATED, WATERFORD OFFICE AREA I, WATSON & DAUGHTERS PLUMBING COMPANY, WATSON VAUGHN, WATSONVILLE COAST PRODUCE, INCORPORATED, WAVERLY COUNTRY CLUB, WAXIE'S ENTERPRISES, WAYNE A. LEBLAND, WAYNE D. STINNETT, WAYNE GEMAS, WAYNE H. LARSON, WAYNE THORSON, WAY'S GARAGE, INCORPORATED, WELDON, WILLIAMS & LICK, INCORPORATED, WELLINGTON ACE HARDWARE, INCORPORATED, WELLS FARGO BANK, WENDEL D. TATE, WENDELL MOREY, WEST ASHLEY CHURCH, WEST CENTRAL PRODUCE, WEST COAST FOODS, INCORPORATED, WEST GATE SHEET METAL, INCORPORATED, WEST PUBLISHING COMPANY, WESTERN FARM SERVICE, INCORPORATED, WESTERN GOLF INCORPORATED, WESTERN LAND PARTNERS I, a general partnership, WESTERN RESORT PUBLICATIONS, WESTERN TURF, WESTINGHOUSE ENVIRONMENTAL & GEOTECHNICAL, WESTLAKE HARDWARE, INCORPORATED, WGM/HYDRO, WHITEHURST ALUMINUM PRODUCTS COMPANY,

WHITEWATER ROCK & SUPPLY COMPANY, WIGINTON FIRE SPRINKLERS, INCORPORATED, WILBUR-ELLIS COMPANY, WILLARD A. HUGHES, WILLARD L. SCHMIDT, WILLARD M. GILLIES, WILLIAM A. DALHAMER, WILLIAM A. GOTHARD, WILLIAM A. MOODY, WILLIAM A. TEIPNER, WILLIAM ANDREW EKLUND, WILLIAM BLAIR-DALBEY, WILLIAM C. BROWN, WILLIAM C. GARLAND, WILLIAM C. KELLOGG, WILLIAM C. NEESLEY, WILLIAM CAMPBELL, WILLIAM CHADNEY, WILLIAM CHAGARES, WILLIAM D. DAVIS & SONS, INCORPORATED, WILLIAM D. GWYNNE, WILLIAM DETRIXHE, WILLIAM DOYLE, WILLIAM E. DAHLBERG, WILLIAM E. DURRETT, WILLIAM E. GLENNON, WILLIAM E. NELSON, WILLIAM F. BAXTER, WILLIAM F. BLUM, WILLIAM F. LAWE, WILLIAM F. STRUB, JR., WILLIAM H. BROWN, JR., WILLIAM H. BURTON, WILLIAM H. CAINE, WILLIAM H. MADDEN, WILLIAM H. EICHENGREEN, WILLIAM H. SADLER, WILLIAM J. BEDFORD, WILLIAM J. HOLDMAN, DDS, WILLIAM J. MARLIN ESTATE, WILLIAM J. WILLIAMS, WILLIAM JARVIS, WILLIAM JOSPEH WOOD, WILLIAM L. CELLI, WILLIAM L. GREGORY, WILLIAM L. STURGEON, WILLIAM L. WALTER, WILLIAM M. BYRNE, WILLIAM M. GREEN, Doctor, WILLIAM M. MCCUNE, WILLIAM M. MORROW, WILLIAM M. SECOR, WILLIAM M. SCHWARTZ, WILLIAM MACGREGOR, WILLIAM MICHAEL HOPPE, WILLIAM N. TERPSTRA, WILLIAM P. GREEN, WILLIAM P. DONELAN, JR., WILLIAM P. KELLEY, WILLIAM P. PELENSKY, WILLIAM PENNINGTON, WILLIAM Q. CURRAN, WILLIAM S. GORMAN, WILLIAM T. PELLETIER, WILLIAM T. WILKINSON, WILLIAM R. BLAKELEY, M.D., WILLIAM R. HARRIS, WILLIAM R. HOLMES, WILLIAM REINHARD, WILLIAM S. SKEEN, WILLIAM SECOR, WILLIAM SELMAN, WILLIAM STAHL, WILLIAM O. PALMER, WILLIAM P. WRIGHT,

WILLIAM W. GOW, WILLIAM & LAURA STAHL, WILLIAM W. STUART, WILLIAM W. VAN DYKE, WILLIAM WITTALL, WILLIE WOOD, WILLIS C. RECH, WILLOW CREEK COUNTRY CLUB, dba Hillcrest Golf & Country Club, WILMA B. MORGAN, WILSON RACQUET SPORTS, WILSON INABINET, WILSON SPORTING GOOD, WIND & RAIN SHIELD, INCORPORATED, WINSTON L. ADAMS, WOODBELL COMPANY LIMITED, WOODBURY CHEMICAL COMPANY, WOODWARD-CLYDE CONSULTANTS, WORKSMAN TRADING CORPORATION, WORLD PAC TRADE CORPORATION, dba Pure Juice, WORLD TRAVEL SERVICE, WORLDWIDE DATE PRODUCTS, INCORPORATED, WP GROUP, dba Word Processing Group, WP LAW, INCORPORATED, WRENN HANDLING, INCORPORATED, WULBERN-KOVAL COMPANY, INCORPORATED, WWD CORPORATION, WYNN'S IGA

XEROX

YASUO JAYSON TERADA, YOICHI HATTORI, YONEX CORPORATION, YONG KIM, YOSHIAKI FUJIMOTO, YOSHIICHI ADACHI, YOUNG FAMILY TRUST, YUH C. YIM

ZEE MEDICAL SERVICE, a division of Boad Seven, Incorporated, ZELLERBACH, a Mead Company, ZENITH TRAVEL, INCORPORATED, ZUISHO HAYASHI

Claimants.

BUREAU OF INDIAN AFFAIRS, CLUB CORPORATION OF AMERICA, D. SCOTT CONE, F&D PARTNERSHIP, LIMITED, HOTEL ASSOCIATES OF PALM SPRINGS, a California limited partnership and Capitol Hotel Group, hotel associates of Palm Springs, a California limited partnership and capitol hotel group, JOHN TRIANA, JOHN WILSON REED, KSL RECREATION CORPORATION, LA JOLLA PACIFIC EQUITIES, INCORPORATED

AND INLAND PACIFIC REAL ESTATE, INCORPORATED, LAQUINTA MEDICAL/COMMERCIAL PLAZA, LIMITED, MARK GOFF, MIKE MARTIN, MISSION HILLS EQUITY COUNTRY CLUB, INCORPORATED, MORGAN STANLEY REAL ESTATE FUND, L.P., NATIONSBANK INVESTMENT BANKING COMPANY, PALM BEACH POLO CLUB MEMBERSHIP ASSOCIATION, INCORPORATED, R. JENEANE TREACE, STANFORD RANCH, INCORPORATED, THOMAS E. HEADRICK, TOC, INCORPORATED, a wholly owned subsidiary of Virginia Investment Trusts, TRI-STATE GROUP, INCORPORATED

Respondents,

US Trustee,

Trustee

No. 94-2550
CA-91-5287-2-1
CA-91-3287-2-1
BK-91-5814
CA-91-5386-2-1
CA-91-3286-2-1
BK-91-5815
CA-91-5291-2-1
CA-91-3291-2-1
BK-91-5816
CA-91-5290-2-1
CA-91-3290-2-1
BK-91-5817
CA-91-5289-2-1
CA-91-3289-2-1
BK-91-5819
CA-91-5288-2-1
CA-91-3288-2-1
BK-91-5818
CA-92-3548-2-1
BK-92-77109

In Re: LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation, LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, a Delaware Corporation, LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, an Oklahoma Corporation, LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, A Delaware Corporation, LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, a Louisiana Corporation, CARMEL VALLEY RANCH, a California Corporation, CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation,

Debtors

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, d/b/a West Beach Tennis Club, d/b/a West Beach Tennis Parking, d/b/a Turtle Point, d/b/a Town Center, d/b/a Osprey Point Golf Course, d/b/a Kiawah Island Resorts, d/b/a Kiawah Island Villa Rental, d/b/a Kiawah Inn, d/b/a Night Heron Park, d/b/a Marsh Point Golf Course, d/b/a Links Golf Course, d/b/a Conference Center, d/b/a East Beach Tennis Center, d/b/a Dune & Lagoon Lodges, d/b/a Club Conference Center, a Delaware Corporation;
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, d/b/a Oak Tree Golf Club, d/b/a Oak Tree Properties, d/b/a Caston Lumber Company, a/k/a Oakridge Manor, d/b/a Oak Tree Communications, d/b/a Oak Tree Country Club, d/b/a Oak Tree Development, d/b/a Oklahoma Business Investments, Incorporated, d/b/a Oak Tree Estates, d/b/a The Waterford Hotel, d/b/a Redlands, an Oklahoma Corporation;

LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, d/b/a Palm Beach Polo and Country Club, a Delaware Corporation;
LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, d/b/a Oak Tree Realty, d/b/a Oak Harbor Yacht and Country Club, d/b/a Oak Harbor (formerly Eden Isles), d/b/a Landmark Realty, d/b/a Landmark Real Estate, d/b/a Landmark Homes, d/b/a Landmark Asset Management Group, d/b/a LML Real Estate Company, d/b/a Belle Terre Golf and Country Club, a Louisiana Corporation;
LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, d/b/a Mission Hills Resort Condominiums, d/b/a Thermal Nursery, d/b/a Stanford Oaks, d/b/a Sanders Real Estate Company, d/b/a Recreational Resort Marketing Venture, Limited, d/b/a PGA West, d/b/a Oak Valley Country Club, d/b/a Oak Valley, d/b/a Oak Tree Hotels, Incorporated, d/b/a Oak Summit, d/b/a National Car Rental Agency, d/b/a Moreno Valley Golf Club, d/b/a/ Moreno Valley Ranch, d/b/a Moreno Valley Auto Mall, d/b/a Mission Hills Tennis Club, d/b/a Mission Hills Resort Golf Club, d/b/a Mission Hills Resort Condominiums, d/b/a Mission Hills Real Estate, d/b/a Mission Hills Real Estate Company, d/b/a Mission Hills Golf Club, d/b/a Mission Hills General and Administrative Committee, d/b/a Mission Hills Country Club, d/b/a Mission Hills Corporation, d/b/a Mission Hills Company, d/b/a Landmark Special Events, d/b/a Landmark Real Estate Company, d/b/a Landmark Productions, d/b/a Landmark Mortgage Company, d/b/a Landmark Land Golf Company, d/b/a Landmark Event Management, d/b/a Landmark Communications, Incorporated, d/b/a La Quinta National Golf Club, d/b/a La Quinta Leasing, d/b/a La Quinta Hotel Tennis Club, d/b/a La Quinta Hotel Real Estate Company, d/b/a La Quinta Hotel Golf Club, d/b/a La Quinta Hotel Golf and Tennis Resort, d/b/a La Quinta Hotel, d/b/a La Quinta

Golf Academy, d/b/a La Quinta Cove, d/b/a La Quinta Air Services, d/b/a LML Real Estate Company, Incorporated, d/b/a LML Mission Hills Corporation, d/b/a LML Construction Co., d/b/a Greenspot, d/b/a Foster Turf Products, d/b/a FTP Wholesale Growers, d/b/a FTP/Bergen Nurseries, d/b/a Dixie Mortgage Company, d/b/a Carmel Valley Ranch Real Estate Company, d/b/a Bergen Nursery, d/b/a Acorn Purchasing, a Delaware Corporation;
CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation;
CARMEL VALLEY RANCH, a/k/a Carmel Valley Ranch Tennis Club, a/k/a Carmel Valley Ranch Resort, a/k/a Carmel Valley Ranch, Incorporated, a California Corporation;

Debtor - Appellants

RESOLUTION TRUST CORPORATION, a receiver (formerly conservator) for Oak Tree Federal Savings Bank

Creditor - Appellant

v.

D. SCOTT CONE, JOHN WILSON REED,

Respondents - Appellees

BERNARD G. ILLE, DAVID POPPER, GARY BRAUN, GERALD G. BARTON, GINA TRAPANI, HERBERT V. LARSON, JR., JOE W. WALSER, JR., LAW FIRM OF POPPER & POPPER, LAW FIRM OF GLASS & REED, MOHAMAD MOTAHARI, ROBERT H. HABANS, WILLIAM W. VAUGHAN, III, WILLIAM CAMPBELL, JR.

Claimants - Appellees

JONES, DAY, REAVIS & POGUE, MCGLINCHEY, STAFFORD & LANG, MCNAIR & SANFORD, P.A.

Parties in Interest - Appellees

ALPHA NURSERY, INCORPORATED, ARVIDA/JMB PARTNERS, BART BOREN, BERNARDO GOUTHIER, BORAL RESOURCES, INCORPORATED, C. M. HUBBARD & SONS, CECIL ROTH FARMS, COASTAL INSTITUTIONAL DISTRIBUTORS, CRI, INCORPORATED, E. MCGRATH APPAREL COMPANY, ERNIE ZIELINSKI FARMS, FARM CREDIT SERVICES OF SOUTHERN CALIFORNIA, FLORIDA ROWING CENTERS, INCORPORATED, GLEN ROTH FARMS, GLEN ZIELINSKI FARMS, GORDON WHEELER GALLERY, HAYWORTH FARMS, INCORPORATED, HIGH TECH IRRIGATION, INCORPORATED, HOTEL OF PALM SPRINGS, IMAGE NETWORK, INCORPORATED, ITT ADMINISTRATORS, J. J. KREBS & SONS, INCORPORATED, LAIDLAW WASTE SYSTEMS, INCORPORATED, LOUIS L. KOKKELER, M&D MCKAY FARMS, INCORPORATED, MATT ROTH, MIKE THOMPSON, MULLEN FARMS, an Oregon Partnership, PALM BEACH POLO AND COUNTRY CLUB PROPERTY OWNERS' ASSOCIATION, INCORPORATED, PAN AMERICAN LIFE INSURANCE COMPANY, PGA WEST, POHLSCHNEIDER FARMS, INCORPORATED, PRICE WATERHOUSE, PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUDENTIAL INSURANCE COMPANY, INCORPORATED, QUAIL VALLEY MANAGEMENT, INCORPORATED, QUINN, EMANUEL & URQUHART, SOUTHERN FARM BUREAU, SUNRISE COMPANY, SUSAN VINEYARD, UNSECURED CREDITORS COMMITTEE,

Creditors.

88314 ONTARIO LIMITED, 52ND STREET FARM MARKETS, A&B BUILDING MAINTENANCE, A. BYRON PERKINS, A. C. HOUSTON LUMBER COMPANY, A.C. NEWMAN & COMPANY INSURANCE, A. C. PUMP SERVICE, INCORPORATED, A. D. FRESHOUR, A. J. AMENDOLA, A. LINC LANCET, A. N. SPENCER, A. WALLY SANDACK, A-1 FIRE EQUIPMENT, A-ALADIN

TRAVEL, A-Z OFFICE SUPPLY, AAA RENTALS, INCORPORATED, AABACO INDUSTRIES, INCORPORATED, AAR/NEWAY UNIFORM SUPPLY, AB & ASSOCIATES, ABACUS TEMPORARY SERVICES, INCORPORATED, ABLE LAWNMOWER SALES AND SERVICE, ABOUT TRAVEL, INCORPORATED, ABSOLUTE CLEANING COMPANY, ACCENT LANDSCAPING & PAVING, ACE ALTERNATORS, INCORPORATED, ACE HARDWARE, #2786F, ACE PRINTING COMPANY, ACKERLEY AIRPORT ADVERTISING, ACME DISPLAY FIXTURE COMPANY, INCORPORATED, ACME RESTAURANT SUPPLY, ADAM J. MICHAEL, ADOHR FARMS, INCORPORATED, ADRIAN GOLDSTEIN, ADRIAN MARSDEN, ADVANCED AMENITIES, ADVANCED TELECOMMUNICATIONS CORPORATION, ADVANCED TELEPHONE TECHNOLOGY, ADVANCED DRAINAGE SYSTEMS, INCORPORATED, ADVANTA LEASING CORPORATION, AIRBORNE FREIGHT CORPORATION, AJAX OF LOUISIANA, AJF LEASING, INCORPORATED, a division of AJF Warehouse Distributors, Incorporated, AL PACKER FORD WEST, ALAN C. FURTH, ALAN C. NEWMAN, ALAN D. HIURA, DDS, ALAN H. LAZARUS, ALAN G. DAVIS/AGD INVESTMENTS CORPORATION, ALAN G. GRAY, ALAN G. PEDERSEN, ALAN H. BEYER, ALANNAH SINCLAIRE, ALBERT G. SIMPSON, JR., ALBERT J. STODDART, ALBERT LEGITTINO, ALBERT R. SIMON, ALDO J. TEST, ALEX N. CAMPBELL, ALEX SHERMAN, d/b/a A&S Coffee Services, ALFRED A. LEVIN, ALFRED SHAIN, ALL YOUR NEEDS MET, ALL CLEAR WINDOW CLEANING, INCORPORATED, ALLEN H. OGLANDER, ALLEN O. HUFF, ALLEN FREIDSON, ALLEN MERCHANT, ALLEN NEWTON, M.D., ALLEN T. BROWN, ALLEN W. SHARPE, ALLIE MAE, ALMAR CHEMICAL COMPANY, INCORPORATED, ALOE UP PALMS, ALTA DENA CERTIFIED DIARY, INCORPORATED, ALTERMAN STUDIOS, INCORPORATED, ALVIN H. BLAINE, ALVIN L.

RUSSO, ALVIN S. MORROW, M.D., ALYS M. BACHLER, AMBASSADOR FACTORS DIVISION OF FLEET FACTORS CORPORATION, AMERICA'S CHOICE COMPANY, AMERICAN COASTAL DEVELOPMENT CORPORATION, AMERICAN LINEN SUPPLY COMPANY, AMERICAN HOTEL REGISTER COMPANY, AMERICAN EXPRESS TRAVEL RELATED, AMERICAN LUMBER & SUPPLY, ANDERSEN & ASSOCIATES, ANDERSON ARMORED CAR SERVICE, INCORPORATED, ANDREW C. SMITH, ANDREW INGRAM, ANDREW J. FENADY, ANDREW KRISTO, ANDREW L. ANDERSON, ANDREW M. MASCIARELLA, ANDREW P. LOMBARD, ANDREW ROSSI, ANDY ZEHNDER, ANGELICA UNIFORM GROUP, ANHEUSER-BUSCH COMPANIES, ANITA FELLER, d/b/a Anita's, ANITA VORHEES JACKSON, ANNABELLE SAFRAN, ANNANDALE GOLF CLUB, ANNENBERG CENTER AT EISENHOWER, ANNELY M. KLINGENSMITH, ANTHONY G. QUADROS, ANTHONY J. CARR, ANTHONY J. MARTINO, ANTHONY J. PORCELLO, ANTIGUA SPORTSWEAR, INCORPORATED, APPLAUSE, INCORPORATED, APPLIED TECHNOLOGY & MANAGEMENT, INCORPORATED, APPLIED SOIL MECHANICS, INCORPORATED, AQUA-SERV ENGINEERS, INCORPORATED, ARA SERVICES MAGAZINE & BOOK DIVISION, ARETA B. MCKENZIE TRUST, ARIZONA MANUFACTURING & EMBROIDERY, ARMIN F. STEINER, ARREST A PEST, ARROW LANDSCAPES & MAINTENANCE, INCORPORATED, ART & LETTER SERVICE, ARTESIA IMPLEMENT, ARTHUR B. HORTON, ARTHUR C. LINNEMEYER, ARTHUR C. SCHULER, ARTHUR E. BRANDT, ARTHUR E. NELSON, ARTHUR L. JACOBSON, ARTHUR MAGISTER, ASAP ICE, ASHELY D. HOFFMAN, ASHLAND CHEMICAL, INCORPORATED, ASIAN AMERICAN PARTNERS, ASSIST COMPUTER CONSULTANTS, ASSOCIATED UNIFORM RENTAL & LINEN SUPPLY, INCORPORATED,

ASSUMPTION PARISH, AT ONCE TEMPORARY SERVICES, AT&T, ATKINSON POOL COMPANY, INCORPORATED, ATLANTIC SERVICES, INCORPORATED, ATLAS COATING COMPANY, INCORPORATED, AUBREY DEVINE, AUREUS LIMITED, AVID SPORTSWEAR, INCORPORATED

B&C TURF PRODUCTS, INCORPORATED, B&C SEAFOOD, INCORPORATED, B&M MAPS, B. D. CHAMAS, B. J. BUCHANAN, B. RENEE HAMEL, BAKER AUDIO, INCORPORATED, BANCBOSTON FINANCIAL COMPANY, BANCROFT-WHITNEY LAW PUBLISHERS, BANKSOUTH, N.A., BANNING ACE HARDWARE 5826S, BARBARA EDEN, BARBARA MARCHITELLI, BARBARA ROGERS, BARNEY J. BELLELI, BARRY M. TAYLOR, BARRY PRESSMAN, BARRY W. GENDELMAN, M.D., BASE DISTRIBUTORS, INCORPORATED, BAUER TIRE INCORPORATED, dba Goodyear Tire Center, BAUSCH & LOMB INCORPORATED, BAYLAUREL CORPORATION, a California corporation, BAYSHORE PUBLISHING GROUP, INCORPORATED, BEACHCOMBERS, INCORPORATED, BEAUMONT SAFE & LOCK, BEAUMONT TIRE & MUFFLER SERVICE, INCORPORATED, BELLE POINT DRAINAGE DISTRICT, #1, BELLERIVE COUNTRY CLUB, BELLSOUTH ADVERTISING & PUBLISHING COMPANY, BELLSOUTH COMMUNICATION SYSTEMS, INCORPORATED, BEN PON, BEN HOGAN COMPANY, BEN HARRIS, BEN E. KEITH FOOD COMPANY OF OKLAHOMA, BEN ARNOLD COMPANY, INCORPORATED, BEN F. NIEMAN, BEN RASKIN, BENTLEY PRITSKER, BENTON'S PAINT, INCORPORATED, BERIT FALGE, BERKELEY ELECTRIC COOPERATIVE, INCORPORATED, BERKLEY DAVID DESIGNS, BERLE MANUFACTURING COMPANY, BERMUDA DUNES COUNTRY CLUB, BERNARD A. SCHLIFKE, BERNARD DICKENS, BERNARD E. MCKUNE, BERNARD P. KIRKPATRICK, BERNICE BUSH-POPE, BERNIE'S CUSTOM CLEANING, INCORPORATED,

BERT FULLER, BETSY B. BENNETT, BETTIE GRESHAM YODER, fka Bettie Gresham Glover, BETTY BELDEN PALMER, BEVERLY ANN RILEY, BEVERLY E. HAMILTON, BEVERLY F. DAROCZY, Trustee, BIG "A" AUTO PARTS, INCORPORATED, BIG CANYON COUNTRY CLUB, BIGGERS BROTHERS, INCORPORATED, BILL D. CATES, BILL D. SAXON, BILL HAWKS, BILL MORRIS, BILL SIMPKINS, dba Re'Al Sportswear, BILL SLIFER, BILL STUBBS, BILLY G. FIELDER, BILLY R. AUSTIN, BILLYE R. AUSTIN, BILLY'S PINESTRAW, BIOTECH PRODUCTS, INCORPORATED, BJARNE QVALE, BLACKIE SERVICES, BLANCHARD MACHINERY COMPANY, BLP MOBILE PLANT – LA PLACE, BLUE FLAME GAS COMPANY, INCORPORATED OF CHARLESTON, BMI SYSTEMS CORPORATION, BOAST, INCORPORATED, BOB G. ALEXANDER, BOB MANFRE, BOBBIE PRECKWINKLE, BOBBY M. CLARK, BOBBY PEULAUD, BOBWHITE SPECIALISTS, INCORPORATED, BOCA TIRES, INCORPORATED, BOHEMIAN DISTRIBUTING COMPANY, BOHICKET YACHT CHARTERS, BOMARC PAPER & PACKAGING INCORPORATED, BOOSE, CASEY, CIFLIN, LUBITZ, MARTIS, MCBANE & O'CONNELL, BORDELON & HILL, BOSTON TRADING LIMITED, INCORPORATED, BOUCHEREAU OIL COMPANY, BOURG SIGNS, BOYD L. JEFFERIES, BOYNTON PUMP & IRRIGATION SUPPLY, BRADFORD A. CARL, BRADFORD KING KROHA, BRADLEY HEATING & AIR CONDITIONING, INCORPORATED, BRADLEY K. PENCE, BRAUN/A-1 LINEN SERVICE, BRENT S. ENRIGHT, BRIAN MILLEMAN, BRIAN O. SHANNON, BRIAN W. HOLMES, BRIGMAN FOODS, INCORPORATED, BRITISH OPEN FOR J&F, BROWNIE'S BLUEPRINT COMPANY, INCORPORATED, BROWNING FERRIS INDUSTRIES, BRUCE A. KAPLAN, BRUCE C. ANDERSON, BRUCE C. RICHARDS, BRUCE D. GRAY, BRUCE G. SCHWARTZ, BRUCE GALVANEK, BRUCE J. HOESMAN, BRUCE L. DOW

PBCC, PEADOR FARAMARZI, PEARL HAYES, PEARLSTINE DIST, INCORPORATED, PEGGY FIELD LOVE, PEGGY RIEMAN, PELICAN ICE & COLD STORAGE, PENINSULA LASER PRINT, PENINSULAR ELECTRIC DISTRIBUTORS, INCORPORATED, PENN ATHLETIC PRODUCTS, PENN TULLOCH ASSOCIATES, d/b/a Highland Games, PEPSI-COLA, PEOPLE POWER, INCORPORATED, PERFORMANCE ENGINEERED PRODUCTS, PERRY AIR CONDITIONING, INCORPORATED, PERSONALIZED TRAVEL, PETE PETRAFESO, PETE PORFIDO, PETE'S ROAD SERVICE, INCORPORATED, PETER A. TUOHY, PETER BLAISE DESNOES, PETER C. JAQUITH, PETER E. BLACKSTOCK, PETER JAMES DIAZ, PETER JAMES VOLOSHIN, PETER L. MORRISROE, PETER MCWADE, PETER R. BLAIR, PETER SUPRUNUK, PETRO MECHANICAL, INCORPORATED, PGA OF AMERICA, PGA PACKAGING, PGA TOUR, INCORPORATED, PGA WEST ASSOCIATES LIMITED, PGA WEST MASTER ASSOCIATION, PGA WEST RESIDENTIAL ASSOCIATION, INCORPORATED, PHILIP D. FARMAR, PHILIP DRAGIC, PHILIP E. SIMON, PHILIP Y. BROWNING, PHILLIP KAPLAN, PHILIP G. LYNCH, II, PHILLIP MASCHKA, PHILLIP P. PERRELLI, PINE STATE KNITWEAR, PICKS AUTO PARTS, INCORPORATED, PITNEY & BOWES, INCORPORATED, Copier Division, PLANT CLUB NURSERY, PLANT PEOPLE, PLANTERSVILLE TURF, POLO RALPH LAUREN, POMA DISTRIBUTING COMPANY, PONCA CITY COUNTRY CLUB, PORT CITY PAPER COMPANY, PORTER BROTHERS, POWERS NISSAN, PRAIRIE DUNES, PRECISION INDUSTRIES, INCORPORATED, PRECISION SMALL ENGINE COMPANY, PRESS-ENTERPRISE COMPANY, PRESTON J. MOORE, PRESTONWOOD COUNTRY CLUB, PRIDE/BEST CLEANERS, INCORPORATED, PRINCE MANUFACTURING COMPANY,

INCORPORATED, PRINGLE OF SCOTLAND, PRODUCERS DAIRY FOODS, INCORPORATED, PROGROUP, INCORPORATED, PROPERTY SERVICES, INCORPORATED, PRUDENTIAL OVERALL SUPPLY, PUREGRO COMPANY, PURITY WATER SYSTEMS

QUALITY AUTO PARTS, QUANTUM SPORTSWEAR, QUICK PRINT OF OKLAHOMA

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U. S. BATTERY-CORONA, U. S. LINC, INCORPORATED, UNIFORMS TO YOU, UNIGLOBE CAROLINA TRAVEL, UNIJAX, UNION BANK, UNION SEA FOODS, INCORPORATED, UNISA AMERICA, INCORPORATED, UNISYS CORPORATION, UNISYS FINANCE CORPORATION, UNITED ARTISTS REALTY COMPANY, UNITED BANKCARD, INCORPORATED, UNITED PARCEL SERVICE, UNITED SPECIALTIES, UNITED STATES POLO ASSOCIATION, UP FRONT DESIGNS, INCORPORATED, US CABLE, US SPRINT COMMUNICATIONS COMPANY, US POSTAL SERVICE, USA TODAY, USG SOUTHEAST, UTILITY AIR CONDITIONING, INCORPORATED

V. B. ANDERSON COMPANY, VAHE SIMONIAN, VALLEY HARVESTING, INCORPORATED, VALLEY OFFICE EQUIPMENT, INCORPORATED, VALLEY WIDE EQUIPMENT RENTALS & SALES, VAN REX GOURMET FOODS COMPANY, INCORPORATED, VAN WATERS & ROGERS, INCORPORATED, VANCE C. MINTER, VELDA FARMS, INCORPORATED, VELDA M. APPLEBEE, VENDOME HEADWEAR, VERLA C. BROWNING, VERNON JUERGENS, VERNON M. LEWIS, VERNON R. VERON, VICTOR H. SCHOLFIELD, VIGORO INDUSTRIES, INCORPORATED, VIKING AUTO CENTER, INCORPORATED, VIKING TRUCK TIRE CENTER, VILLAGE GARDEN, VILLIO ENTERPRISES, INCORPORATED, dba Imperial Printing, VINCENT COSMO TAURMINA, VINCENT J. SCHREIBER, VINCENT LENNON, VIRGIL C. MOE, VIRGINIA COUNTRY CLUB, VOSS ELECTRIC SUPPLY COMPANY

W. D. SCOTT GROUP, INCORPORATED, W. E. DUFF, Doctor, W. E. MITCHELL, W. FILLMORE WOOD, JR., W. H. CAINE, W. H. DAUM, JR., W. H. WOLFF, W. JAMES SAUL, W. L. SUTTON COMPANY, W. P. LAW,

INCORPORATED, W. ROBERT WYMAN, W. STEWART THOMPSON, W. W. CAINE, W. W. GRAINGER, INCORPORATED, W. W. SMITH COMPANY, WALKER H. STRAUS, WALLACE COMPUTER SERVICES, INCORPORATED, WALLACE J. GROWNEY, WALLACE OSBURN LAUB TRUST, WALT OSGOOD, WALTER PALMER STUDIO, WALTER PALMER, WALTER BROWER, WALTER A. LOCKER, WALTER B. CHAHANOVICH, WALTER C. LORENZEN, WALTER DALE ABRAHAM, WALTER E. WICMOT, WALTER F. COMBS, WALTER ISING, WALTER J. OSGOOD, WALTER J. PARKER, WALTER J. PORTER, WALTER L. PALMER, WALTER M. SCHROEDER, WALTER PELENSKY, WARD R. YOUNG, WARREN DRIVER, WARREN F. HOFFMAN, WARREN S. WEXLER, WARREN SQUIRES, WASHINGTON FLOOR COVERING, INCORPORATED, WASTE MANAGEMENT OF CHARLESTON, WASTE MANAGEMENT/PALM DESERT DISPOSAL, WATER SERVICES COMPANY, WATER UTILITIES SERVICES, INCORPORATED, WATERFORD OFFICE AREA I, WATSON & DAUGHTERS PLUMBING COMPANY, WATSON VAUGHN, WATSONVILLE COAST PRODUCE, INCORPORATED, WAVERLY COUNTRY CLUB, WAXIE'S ENTERPRISES, WAYNE A. LEBLAND, WAYNE D. STINNETT, WAYNE GEMAS, WAYNE H. LARSON, WAYNE THORSON, WAY'S GARAGE, INCORPORATED, WELDON, WILLIAMS & LICK, INCORPORATED, WELLINGTON ACE HARDWARE, INCORPORATED, WELLS FARGO BANK, WENDEL D. TATE, WENDELL MOREY, WEST ASHLEY CHURCH, WEST CENTRAL PRODUCE, WEST COAST FOODS, INCORPORATED, WEST GATE SHEET METAL, INCORPORATED, WEST PUBLISHING COMPANY, WESTERN FARM SERVICE, INCORPORATED, WESTERN GOLF INCORPORATED, WESTERN LAND PARTNERS I, a general partnership, WESTERN RESORT PUBLICATIONS, WESTERN TURF, WESTINGHOUSE ENVIRONMENTAL & GEOTECHNICAL, WESTLAKE

HARDWARE, INCORPORATED, WGM/HYDRO, WHITEHURST ALUMINUM PRODUCTS COMPANY, WHITEWATER ROCK & SUPPLY COMPANY, WIGINTON FIRE SPRINKLERS, INCORPORATED, WILBUR-ELLIS COMPANY, WILLARD A. HUGHES, WILLARD L. SCHMIDT, WILLARD M. GILLIES, WILLIAM A. DALHAMER, WILLIAM A. GOTHARD, WILLIAM A. MOODY, WILLIAM A. TEIPNER, WILLIAM ANDREW EKLUND, WILLIAM BLAIR DALBEY, WILLIAM C. BROWN, WILLIAM C. GARLAND, WILLIAM C. KELLOGG, WILLIAM C. NEESLEY, WILLIAM CHADNEY, WILLIAM CHAGARES, WILLIAM D. DAVIS & SONS, INCORPORATED, WILLIAM D. GWYNNE, WILLIAM DETRIXHE, WILLIAM DOYLE, WILLIAM E. DAHLBERG, WILLIAM E. DURRETT, WILLIAM E. GLENNON, WILLIAM E. NELSON, WILLIAM F. BAXTER, WILLIAM F. BLUM, WILLIAM F. LAWE, WILLIAM F. STRUB, JR., WILLIAM H. BROWN, JR., WILLIAM H. BURTON, WILLIAM H. CAINE, WILLIAM H. MADDEN, WILLIAM H. EICHENGREEN, WILLIAM H. SADLER, WILLIAM J. BEDFORD, WILLIAM J. HOLDMAN, DDS, WILLIAM J. MARLIN ESTATE, WILLIAM J. WILLIAMS, WILLIAM JARVIS, WILLIAM JOSEPH WOOD, WILLIAM L. CELLI, WILLIAM L. GREGORY, WILLIAM L. STURGEON, WILLIAM L. WALTER, WILLIAM M. BYRNE, WILLIAM M. GREEN, Doctor, WILLIAM M. MCCUNE, WILLIAM M. MORROW, WILLIAM M. SECOR, WILLIAM M. SCHWARTZ, WILLIAM MACGREGOR, WILLIAM MICHAEL HOPPE, WILLIAM N. TERPSTRA, WILLIAM P. GREEN, WILLIAM P. DONELAN, JR., WILLIAM P. KELLEY, WILLIAM P. PELENSKY, WILLIAM PENNINGTON, WILLIAM Q. CURRAN, WILLIAM S. GORMAN, WILLIAM T. PELLETIER, WILLIAM T. WILKINSON, WILLIAM R. BLAKELEY, M.D., WILLIAM R. HARRIS, WILLIAM R. HOLMES, WILLIAM REINHARD, WILLIAM S. SKEEN, WILLIAM SECOR, WILLIAM SELMAN, WILLIAM

STAHL, WILLIAM O. PALMER, WILLIAM P. WRIGHT, WILLIAM W. GOW, WILLIAM & LAURA STAHL, WILLIAM W. STUART, WILLIAM W. VAN DYKE, WILLIAM WITTALL, WILLIE WOOD, WILLIS C. REICH, WILLOW CREEK COUNTRY CLUB, dba Hillcrest Golf & Country Club, WILMA B. MORGAN, WILSON RACQUET SPORTS, WILSON INABINET, WILSON SPORTING GOOD, WIND & RAIN SHIELD, INCORPORATED, WINSTON L. ADAMS, WOODBELL COMPANY LIMITED, WOODBURY CHEMICAL COMPANY, WOODWARD-CLYDE CONSULTANTS, WORKSMAN TRADING CORPORATION, WORLD PAC TRADE CORPORATION, dba Pure Juice, WORLD TRAVEL SERVICE, WORLDWIDE DATA PRODUCTS, INCORPORATED, WP GROUP, dba Word Processing Group, WP LAW, INCORPORATED, WRENN HANDLING, INCORPORATED, WULBERN-KOVAL COMPANY, INCORPORATED, WWD CORPORATION, WYNN'S IGA

XEROX

YASUO JAYSON TERADA, YOICHI HATTORI, YONEX CORPORATION, YONG KIM, YOSHIAKI FUJIMOTO, YOSHIICHI ADACHI, YOUNG FAMILY TRUST, YUH C. YIM

ZEE MEDICAL SERVICE, a division of Boad Seven, Incorporated, ZELLERBACH, a Mead Company, ZENITH TRAVEL, INCORPORATED, ZUISHO HAYASHI

Claimants.

BUREAU OF INDIAN AFFAIRS, CLUB CORPORATION OF AMERICA, F&D PARTNERSHIP, LIMITED, HOTEL ASSOCIATES OF PALM SPRINGS, a California limited partnership and Capitol Hotel Group, hotel associates of Palm Springs, a California limited partnership and capitol hotel group, JOHN TRIANA, KSL RECREATION CORPORATION, LA JOLLA PACIFIC EQUITIES, INCORPORATED AND INLAND PACIFIC REAL ESTATE,

INCORPORATED, LAQUINTA MEDICAL/COMMERCIAL PLAZA, LIMITED, MARK GOFF, MIKE MARTIN, MISSION HILLS EQUITY COUNTRY CLUB, INCORPORATED, MORGAN STANLEY REAL ESTATE FUND, L.P., NATIONSBANK INVESTMENT BANKING COMPANY, PALM BEACH POLO CLUB MEMBERSHIP ASSOCIATION, INCORPORATED, R. JENEANE TREACE, STANFORD, RANCH, INCORPORATED, THOMAS E. HEADRICK, TOC, INCORPORATED, a wholly owned subsidiary of Virginia Investment Trusts, TRI-STATE GROUP, INCORPORATED

Respondents,

US Trustee,

Trustee

ORDER

Appellees, Gerald G. Barton, William W. Vaughan, III, and Joe W. Walser have filed an untimely petition for rehearing and suggestion for rehearing in banc. This Court strictly enforces the time limits for filing petitions for rehearing and suggestions for rehearing in banc.

The Court denies the petition for rehearing and suggestion for rehearing in banc as untimely filed.

For the Court – By Direction

/s/ Bert M. Montague
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LANDMARK LAND COMPANY OF OKLAHOMA, INC. an Oklahoma Corporation, Debtor.	CIV. ACTION NO.2:91-5286-1 BANKRUPTCY CASE NO. 91-05815
IN RE: LANDMARK LAND COMPANY OF CAROLINA, INC. a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5287-1 BANKRUPTCY CASE NO. 91-05814
IN RE: CLOCK TOWER INVESTMENTS, LTD., a California Corporation, Debtor.	CIV. ACTION NO.2:91-5288-1 BANKRUPTCY CASE NO. 91-05818
IN RE: LANDMARK LAND COMPANY OF CALIFORNIA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5289-1 BANKRUPTCY CASE NO. 91-05819
IN RE: LANDMARK LAND COMPANY OF LOUISIANA, INC., a Louisiana Corporation, Debtor.	CIV. ACTION NO.2:91-5290-1 BANKRUPTCY CASE NO. 91-05817
IN RE: LANDMARK LAND COMPANY OF FLORIDA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-3291-1 BANKRUPTCY CASE NO. 91-05816
IN RE: CARMEL VALLEY RANCH, a California Corporation, Debtor.	CIV ACT. NO. 2:92-3548-1 BANKRUPTCY NO. 92-77109 Consolidated for Purposes of Joint Administration Only Under Chapter 11

ORDER ON DEBTORS' MOTION TO RECONSIDER THE COURT'S MAY 27, 1994 ORDER REGARDING INDEMNIFICATION OF OFFICERS AND DIRECTORS

(Filed Oct. 6, 1994)

On September 1, 1994 came on to be heard the Debtors' Motion asking this court to Reconsider its order of May 27, 1994, in which the court granted Debtors' Joint Motion for Authorization to Reimburse Certain Costs of Defense (the Indemnification motion) and granted the Applications of certain attorneys for payment of fees for the representation of Debtors' employees, Scott Cone, Gina Trapini, Gary Braun and Mohammed Motahari.[1] The court limited evidence and argument at the hearing on the motion to reconsider to those matters that were before the court on May 27, 1994, when the court entered its order on the Indemnification Motion.

As an initial matter, the court has decided to sever reconsideration of its order granting the applications for nunc pro tunc employment and for payment of fees filed by William R. Campbell, Jr., Robert H. Habans, Jr., Herbert V. Larson, Jr., David Popper, and John Wilson Reed and the law firms of Popper & Popper and Glass & Reed from this court's reconsideration of the portion of the May 27, 1994, Order related to the indemnification of

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[1] Previously, on August 31, 1994, the court granted motions to intervene in the matter, which were filed by McNair & Sanford; Gerald G. Barton, Jones, Day, Reavis & Pogue; McGlinchey, Stafford & Lang; William W. Vaughan, III, Joe W. Walser, and Bernard G. Ille; and, Messrs. Campbell, Habans, Larson, Popper and Reed, requesting permission to intervene and to receive notice on the Debtors' Motion to Reconsider the Court's May 27, 1994 order.

officers, directors and employees.[2] As a result, this order will deal only with the court's reconsideration of May 27, 1994, Order as it relates to the court's finding that the Debtors are obligated to indemnify those officers, directors and agents who incur reasonable and necessary fees and expenses in defending themselves against charges for actions taken to benefit the Debtors' estates.

The court accepted argument on Debtors' motion to reconsider because the posture of the parties involved has changed since the Indemnification motion was first filed in March of 1992 and heard on June 2 and 3, 1992.

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[2] The procedural history of the filing of the applications for employment nunc pro tunc and for payment of fees incurred on behalf of Braun, Trapini, Cone and Motahari, four Debtor employees, is convoluted. Originally, Debtors sought indemnification for officers, directors and agents of the Debtors. Later the Debtors sought approval for payments made in the ordinary course of business to attorneys for the representation of Braun, Cone, Trapini, and Motahari.

The RTC sought to have those attorneys disgorge themselves of the fees collected, but later withdrew that motion. Thereafter, the RTC, operating as New Debtors, reached an agreement with the employees' attorneys that the Plan of Reorganization would not nullify the attorneys' right to retain fees collected.

After approval and confirmation of the Plan, the employees' attorneys filed their applications for employment and for payment of fees. Through some error in communication and unbeknownst to the court, the applications were never served on counsel for the New Debtors. As a result, the Debtors first became aware of the filing of the applications was received in this court's order granting the applications.

The court will reconsider the applications following a briefing schedule that has been agreed to by counsel for the New Debtors and counsel for the employees' attorneys.

The Debtors' joint motion for indemnification was filed when Gerald G. Barton was the acting chief executive officer of the Debtors (Old Debtors) and when the Resolution Trust Corporation, acting as receiver for Oak Tree Federal Savings Bank, was a creditor vehemently opposed to the Debtors' Indemnification motion. Thereafter, in September of 1992, after the issuance of a mandate by the Fourth Circuit Court of Appeals that directed this court to take down its preliminary injunction, Barton and others were replaced as the Debtors' Board of Directors by a board elected by Oak Tree (New Debtors).

Upon the seating of the new board, that new board resolved to move the court to allow it to withdraw the Old Debtors' joint motion for indemnification. On November 5, 1992, New Debtors sought the withdrawal of the Indemnification motion; however, the matter had already been heard and taken under advisement by the court. *See*, Transcript of Hearing, Nov. 5, 1992, pp. 65-70. Therefore, the court did not allow the New Debtors to withdraw their motion unilaterally because the beneficiaries of the requested relief were not represented in the proposed Consent Order to withdraw the Indemnification motion that was presented to the court by the New Debtors.

The court is completely dumbfounded by the Debtors' current argument that the Plan of Reorganization discharged the Debtors' obligations to those officers, directors, agents, and employees who were specifically addressed by the Indemnification motion when the court's position on the status of the motion was made clear to all interested parties. Continually since the

November 5, 1992 hearing the court has made it abundantly clear that it considered the Indemnification motion to be under advisement pending resolution by an order of the court. On several occasions when the question of the court's docket arose, the court provided Debtors' counsel with a pending motions list that identified the Indemnification motion as one under advisement with the court.

Since the time that Debtors' management changed hands, much has happened in these bankruptcy cases. On March 18, 1993, this court entered an order confirming a joint plan of reorganization, as promulgated by the New Debtors. The approved Plan includes a provision whereby, as of the Effective Date of the Plan, each Debtor discharged its obligations to indemnify any officer, director, or employee of the Debtor who no longer served the Debtor in such capacity after September 12, 1992. Notwithstanding that provision, the Plan also provides that this court retains jurisdiction over the Debtors' Indemnification motion and other motions still pending on the Effective Date of the Plan.

The court approved the discharging provision because the court had made it perfectly clear to the New Debtors that it intended to rule on the pending motion that specifically requested relief for Barton, Walser, Vaughan, Ille, Cone, Motahari, Trapini and Braun. The court interpreted the discharge provision to have been included to discharge the obligations of Debtors' estates of any potential claims for indemnification by other yet unidentified officers, directors, or employees, as that possibility had been suggested by paragraph 14 of Debtors Supplemental Submission in Support of Joint Motion for Order Authorizing Debtors to Reimburse Certain Costs of

Defense Incurred by Officers, Directors and Employees in Administrative Proceedings, filed August 27, 1992 (Supplemental Submission). Furthermore, the court read the discharging provision of the Plan together with the proviso of retained jurisdiction over pending motions such that it allowed the Court to rule on the motion as it was presented, without leaving the Debtors open to further claims for reimbursement of fees and expenses by those parties specified in the Indemnification motion and the Supplemental Submission. The court did not comprehend that the provision was included as a back door attempt by counsel for the New Debtors to withdraw from the court's consideration the very same matter that New Debtors had already attempted to withdraw unsuccessfully.

Accordingly, the court accepted the Plan as promoted by counsel for the New Debtors, confident that the Plan was proposed in good faith and confident that the court had retained jurisdiction over the still pending Indemnification motion. The court does not now, nor did it previously, interpret the Plan of Reorganization as a vehicle for discharging the Debtors' obligation to indemnify the officers, directors, and employees specifically named in the Debtors' motion, for the costs incurred defending themselves for actions taken in the interest of the Debtors' estates.

After considering the arguments of counsel presented on the Motion for Reconsideration, this court is not convinced that its original order was decided in error. Nonetheless, the court will take this opportunity to clarify those portions of the order that upon reflection may be subject to a broader interpretation than intended.

The Indemnification motion presented a discrete issue for the court's consideration. The requested relief that was sought by the Debtors was

> "the Court's approval to reimburse expenses incurred by the Debtors' Personnel in the Administrative Proceeding, including past and future costs of defense, *limited however* to such expenses as are incurred as a result of defending only the charges stemming from the Debtors' Personnel's alleged involvement in the filing of these bankruptcy cases [emphasis in original]."

Indemnification Motion pp. 3-4 (Specifically the requested relief as to Joe Walser, Jr. was limited to reimbursement of expenses only through the period in which Walser was in service to the Debtors. *Id.*, n.1 p.3). The Debtors requested the same relief for certain named employees by a supplemental submission to the Indemnification motion. The motion raised a claim for payment from the Debtors' estates.[3] *In Re Christian Life Center*, 821 F.2d 1370, 1375 (9th Cir. 1987); *In Re Amfesco Industries, Inc.*, 81 B.R. 777, 780-781 (Bkrtcy. E.D.N.Y. 1988).

The Office of Thrift Supervision (OTS) brought Administrative Proceedings against the Debtors' officers, directors, and agents who, acting on behalf of the Debtor companies, participated in the filing of Chapter 11 petitions for the Debtor companies. The OTS seeks atonement

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[3] Whether the claim is entitled to administrative priority no longer is an issue because to the extent that the allowance of an administrative priority depletes the monies available for distribution to general unsecured creditors, all general unsecured creditors with allowed claims will be paid in full under the Plan.

from the named Debtor officers for placing the Debtor companies in bankruptcy. The OTS charges assert that the Debtors' agents, who were also officers and directors of Oak Tree Savings Bank, breached a fiduciary duty to the bank but the charges included specific complaints against the Debtors' officers, directors and employees for filing for bankruptcy protection. Later other employees were brought before the grand jury in Louisiana in order to testify regarding the filing of the bankruptcy petitions.

Therefore, the only question before this court was whether the subject corporate entities were authorized to indemnify Barton, Walser, Vaughan, Ille, Motahari, Trapini, Braun and Cone for any necessary costs and expenses incurred in defending themselves against any charges arising from their participation in filing and maintaining the bankruptcy actions, if it is determined that those parties acted in good faith on behalf of the Debtor corporations in filing the bankruptcy petitions.

Applicable state corporate law requires that the Debtors indemnify these agents of the corporation for their actions taken on behalf of the corporation, if taken in good faith for the benefit of the corporation. *See*, Cal. Corp. Code, § 317(b) and Cal. Labor Code § 2802; *see also* Del. Code. Ann. tit. 8, § 145(a); Fla. St. § 607.0850; La R.S., tit. 12, § 83; Tit. 18. Okla. Stat. § 1031; S.C. Code Ann. § 33-8-560. In addition, failure to indemnify these parties could subject the Debtors' estates to claims for failure to indemnify.

The relevant Boards of Directors, of these individual Debtor companies involved, resolved to indemnify these

officers, directors and employees.[4] Furthermore, the Debtor companies sought independent legal counsel as to the propriety of the decision to indemnify and to determine if the actions had been taken in good faith, in those cases in which there was a question as to whether the board's action was sufficient.

In seeking the court's reconsideration of its May 27 1994 order, the New Debtors have asserted that the court "found that Messrs. Barton, et al. acted in a manner reasonably believed to be in or not opposed to the best interest of the Debtors . . . and in good faith." Reply to the Oppositions, filed August 8, 1994, p.5, ¶ C. Additionally, the New Debtors argue that Barton acted in bad faith because he breached his fiduciary duties to the bank. *Id.*, at 5-6. The New Debtors also contend that the court went beyond the scope of the Indemnification motion by awarding all money sought and future expenses, which New Debtors claim is not at issue.

First, the court found that the Debtors' estates were required to indemnify officers, directors and agents for those costs of defending themselves for actions taken in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Debtors in placing the Debtors in bankruptcy. The court did not

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[4] The Board of Directors of Clock Tower Place Investments Ltd. authorized the indemnification of Gerald Barton and William Vaughan on April 21, 1992. The Board of Directors of Landmark Land Company of Oklahoma authorized the indemnification of Joe Walser and Bernard Ille, on April 21, 1992. The Board of Landmark of Louisiana authorized the indemnification of Braun, Trapini, Cone and Motahari, on April 21, 1992.

intend for its order to be viewed as a blank check to the former management for its costs incurred in defense of all the OTS charges. It was the court's interpretation of the Plan of reorganization that fees incurred by former management after September 12, 1992, were discharged by the Plan and that the only fees at issue were as specifically requested in the Indemnification motion, which was pending at the time the court signed the order confirming the Plan.

As to the fees requested for Barton, Walser, Ille, and Vaughan, the court was not asked to review particular fee submissions to determine if the costs were incurred solely for defending the action of placing the Debtors in bankruptcy or whether those costs incurred were reasonable and necessary. The court did not find that any particular agent, officer or director of the Debtors had proven that his or her actions were taken in good faith.

Secondly, good faith is "an implicit prerequisite to the filing or continuation of a proceeding under Chapter 11 of the Bankruptcy Code." *In Re Victory Constr. Co.*, 3 C.B.C.2d 655 (B. Ct., C.D. Cal. 1981) (court found an implicit standard of good faith in Chapter 11 cases). *See also*, 5 Collier on Bankruptcy, ¶ 1112.03[3]. Therefore, this court did make a finding that the evidence thus far presented demonstrates that the Debtors' prior management acted in good faith and in the best interests of the Debtors in seeking bankruptcy protection.

Furthermore, whether Mr. Barton or any other officer of the bank breached his fiduciary duty to the bank may be a matter of concern for the RTC or the OTS, but it is not an issue pending before this court. The New Debtors

are confusing their role as management of the Landmark subsidiaries, who have obligations to their former officers and directors under applicable state law, and their role as the Resolution Trust Corporation, conservator of Oak Tree Federal Savings Bank.

The court is not confused. The order as previously issued did not presume to have ended the matter as to whether the expenses that were incurred to defend the officers, directors and employees were reasonable or necessary. Specific fee requests will have to be submitted to determine if the fees and expenses incurred were reasonable and necessary to defend the act of filing the petitions for bankruptcy protection.

The May 27, 1994, Order of this court declared that the Debtors' estates have the authority of this court to indemnify Messrs. Barton, Vaughan, Ille and Walser, and the four named employees, and shall indemnify them, if and when those persons prove by a preponderance of the evidence that they have incurred reasonable expenses in defending themselves for actions taken in good faith with the reasonable belief that such actions were not opposed to the best interests of the Debtor companies. Upon reflection, the court's intended limitation that the former management is entitled to indemnification for the requested fees incurred prior to their replacement is not clear from the language of the May 27, 1994, Order.

Therefore, it is

ORDERED, that to the extent that this order offers any clarification of its May 27, 1994, Order on the issue of indemnification of the Debtors' officers, directors, agents, and employees, the order is so clarified. It is

ORDERED FURTHER, that Debtors' Motion for Reconsideration of the Court's May 27, 1994, Order is granted in part as to the Applications of the Attorneys for Debtors' employees, and denied in part as to the requested authorization to indemnify the officers, directors, agents and employees named by Debtors' Indemnification Motion and Supplemental Submission.

AND IT IS SO ORDERED.

/s/ Falcon B. Hawkins
Falcon B. Hawkins,
United States District Judge

Charleston, South Carolina

October 5th, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LANDMARK LAND COMPANY OF OKLAHOMA, INC. an Oklahoma Corporation, Debtor.	CIV. ACTION NO.2:91-5286-1 BANKRUPTCY CASE NO. 91-05815
IN RE: LANDMARK LAND COMPANY OF CAROLINA, INC. a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5287-1 BANKRUPTCY CASE NO. 91-05814
IN RE: CLOCK TOWER INVESTMENTS, LTD., a California Corporation, Debtor.	CIV. ACTION NO.2:91-5288-1 BANKRUPTCY CASE NO. 91-05818
IN RE: LANDMARK LAND COMPANY OF CALIFORNIA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-5289-1 BANKRUPTCY CASE NO. 91-05819
IN RE: LANDMARK LAND COMPANY OF LOUISIANA, INC., a Louisiana Corporation, Debtor.	CIV. ACTION NO.2:91-5290-1 BANKRUPTCY CASE NO. 91-05817
IN RE: LANDMARK LAND COMPANY OF FLORIDA, INC., a Delaware Corporation, Debtor.	CIV. ACTION NO.2:91-3291-1 BANKRUPTCY CASE NO. 91-05816
IN RE: CARMEL VALLEY RANCH, a California Corporation, Debtor.	CIV ACT. NO. 2:92-3548-1 BANKRUPTCY NO. 92-77109 Consolidated for Purposes of Joint Administration Only Under Chapter 11

ORDER ON MOTIONS TO INTERVENE IN MOTION TO RECONSIDER ORDER REGARDING INDEMNIFICATION OF OFFICERS AND DIRECTORS

On August 31, 1994, the court heard the motions of McNair & Sanford, Gerald G. Barton, Jones, Day, Reavis & Pogue, McGlinchey, Stafford & Lang, William W. Vaughan, III, Joe W. Walser, and Bernard G. Ille, and William R. Campbell, Jr., Robert H. Habans, Jr., Herbert V. Larson, Jr., David Popper, and John Wilson Reed and the law firms of Popper & Popper and Glass & Reed to intervene and receive notice on the Debtors' Motion to Reconsider the Court's May 27, 1994 order regarding Debtors' Joint Motion for Authorization to Reimburse Certain Costs of Defense (the Indemnification motion) and the applications of certain attorneys for payment of fees for the representation of Debtors' employees, Scott Cone, Gina Trapini, Gary Braun and Mohammed Motahari.

Upon consideration of the motions filed, the objections, and responses thereto, and the arguments of counsel, the court has determined that the moving parties represent parties in interest who should be allowed to intervene in the hearing on the Debtors' motion for reconsideration to protect their varied interests. Further, the court shall hear the argument of the Debtors and intervenors on the Debtors' motion for reconsideration of this court's order of May 27, 1994; however, the court will not reopen the record on the underlying motion of the Debtors for Authorization to Indemnify its officers and directors, or the applications of the employees' professional for payment of attorneys fees. Accordingly,

IT IS ORDERED that the motions to intervene reference above shall be and are hereby granted.

/s/ Falcon B. Hawkins
Falcon B. Hawkins,
United States District Judge

Charleston, South Carolina
August 31, 1994

LIST OF PARTIES

In Re: LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, an Oklahoma Corporation
LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, a Delaware Corporation
LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, a Louisiana Corporation
CARMEL VALLEY RANCH, a California Corporation
CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation

Debtors

LANDMARK LAND COMPANY OF CAROLINA, INCORPORATED, d/b/a West Beach Tennis Club, d/b/a West Beach Tennis Parking, d/b/a Turtle Point, d/b/a Town Center, d/b/a Osprey Point Golf Course, d/b/a Kiawah Island Resorts, d/b/a Kiawah Island Villa Rental, d/b/a Kiawah Inn, d/b/a Night Heron Park, d/b/a Marsh Point Golf Course, d/b/a Links Golf Course, d/b/a Conference Center, d/b/a East Beach Tennis Center, d/b/a Dune & Lagoon Lodges, d/b/a Club Conference Center, a Delaware Corporation;
LANDMARK LAND COMPANY OF OKLAHOMA, INCORPORATED, d/b/a Oak Tree Golf Club, d/b/a Oak Tree Properties, d/b/a Caston Lumber Company, a/k/a Oakridge Manor, d/b/a Oak Tree Communications, d/b/a Oak Tree Country Club, d/b/a Oak Tree Development, d/b/a Oklahoma Business Investments, Incorporated, d/b/a Oak Tree Estates, d/b/a The Waterford Hotel, d/b/a Redlands, an Oklahoma Corporation;

LANDMARK LAND COMPANY OF FLORIDA, INCORPORATED, d/b/a Palm Beach Polo and Country Club, a Delaware Corporation;
LANDMARK LAND COMPANY OF LOUISIANA, INCORPORATED, d/b/a Oak Tree Realty, d/b/a Oak Harbor Yacht and Country Club, d/b/a Oak Harbor (formerly Eden Isles), d/b/a Landmark Realty, d/b/a Landmark Real Estate, d/b/a Landmark Homes, d/b/a Landmark Asset Management Group, d/b/a LML Real Estate Company, d/b/a Belle Terre Golf and Country Club, a Louisiana Corporation;
LANDMARK LAND COMPANY OF CALIFORNIA, INCORPORATED, d/b/a Mission Hills Resort Condominiums, d/b/a Thermal Nursery, d/b/a Stanford Oaks, d/b/a Sanders Real Estate Company, d/b/a Recreational Resort Marketing Venture, Limited, d/b/a PGA West, d/b/a Oak Valley Country Club, d/b/a Oak Valley, d/b/a Oak Tree Hotels, Incorporated, d/b/a Oak Summit, d/b/a National Car Rental Agency. d/b/a Moreno Valley Ranch Golf Club, d/b/a Moreno Valley Ranch, d/b/a Moreno Valley Auto Mall, d/b/a Mission Hills Tennis Club, d/b/a Mission Hills Resort Golf Club, d/b/a Mission Hills Resort Condominiums, d/b/a Mission Hills Real Estate, d/b/a Mission Hills Real Estate Company, d/b/a Mission Hills Golf Club, d/b/a Mission Hills General and Administrative Committee, d/b/a Mission Hills Country Club, d/b/a Mission Hills Corporation, d/b/a Mission Hills Company, d/b/a Landmark Special Events, d/b/a Landmark Real Estate Company, d/b/a Landmark Productions, d/b/a Landmark Mortgage Company, d/b/a Landmark Land Golf Company, d/b/a Landmark Event Management, d/b/a Landmark Communications, Incorporated, d/b/a La Quinta National Golf Club, d/b/a La Quinta Leasing, d/b/a La Quinta Hotel Tennis Club, d/b/a La Quinta Hotel Real Estate Company, d/b/a La Quinta Hotel Golf Club, d/b/a La Quinta Hotel Golf and Tennis Resort, d/b/a La

Quinta Hotel, d/b/a La Quinta Golf Academy, d/b/a La Quinta Cove, d/b/a La Quinta Air Services, d/b/a LML Real Estate Company, Incorporated, d/b/a LML Mission Hills Corporation, d/b/a LML Construction Co., d/b/a Greenspot, d/b/a Foster Turf Products, d/b/a FTP Wholesale Growers, d/b/a FTP/Bergen Nurseries, d/b/a Dixie Mortgage Company, d/b/a Carmel Valley Ranch Real Estate Company, d/b/a Bergen Nursery, d/b/a Acorn Purchasing, a Delaware Corporation;
CLOCK TOWER PLACE INVESTMENTS, LIMITED, a California Corporation;
CARMEL VALLEY RANCH, a/k/a Carmel Valley Ranch Tennis Club, a/k/a Carmel Valley Ranch Resort, a/k/a Carmel Valley Ranch, Incorporated, a California Corporation;

Debtor - Appellants

RESOLUTION TRUST CORPORATION, a receiver (formerly conservator) for Oak Tree Federal Savings Bank

Creditor - Appellant

v.

D. SCOTT CONE, JOHN WILSON REED,

Respondents - Appellees

BERNARD G. ILLE, DAVID POPPER, GARY BRAUN, GERALD G. BARTON, GINA TRAPANI, HERBERT V. LARSON, JR., JOE W. WALSER, JR., LAW FIRM OF POPPER & POPPER, LAW FIRM OF GLASS & REED, MOHAMAD MOTAHARI, ROBERT H. HABANS, WILLIAM W. VAUGHAN, III, WILLIAM CAMPBELL, JR.,

Claimants - Appellees

JONES, DAY, REAVIS & POGUE, MCGLINCHEY, STAFFORD & LANG, MCNAIR & SANFORD, P.A.,

Parties in Interest - Appellees

ALPHA NURSERY, INCORPORATED, ARVIDA/JMB PARTNERS, BART BOREN, BERNARDO GOUTHIER, BORAL RESOURCES, INCORPORATED, C. M. HUBBARD & SONS, CECIL ROTH FARMS, COASTAL INSTITUTIONAL DISTRIBUTORS, CRI, INCORPORATED, E. MCGRATH APPAREL COMPANY, ERNIE ZIELINSKI FARMS, FARM CREDIT SERVICES OF SOUTHERN CALIFORNIA, FLORIDA ROWING CENTERS, INCORPORATED, GLEN ROTH FARMS, GLEN ZIELINSKI FARMS, GORDON WHEELER GALLERY, HAYWORTH FARMS, INCORPORATED, HIGH TECH IRRIGATION, INCORPORATED, HOTEL OF PALM SPRINGS, IMAGE NETWORK, INCORPORATED, ITT ADMINISTRATORS, J. J. KREBS & SONS, INCORPORATED, LAIDLAW WASTE SYSTEMS, INCORPORATED, LOUIS L. KOKKELER, M&D MCKAY FARMS, INCORPORATED, MATT ROTH, MIKE THOMPSON, MULLEN FARMS, an Oregon Partnership, PALM BEACH POLO AND COUNTRY CLUB PROPERTY OWNERS' ASSOCIATION, INCORPORATED, PAN AMERICAN LIFE INSURANCE COMPANY, PGA WEST, POHLSCHNEIDER FARMS, INCORPORATED, PRICE WATERHOUSE, PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUDENTIAL INSURANCE COMPANY, INCORPORATED, QUAIL VALLEY MANAGEMENT, INCORPORATED, QUINN, EMANUEL & URQUHART, SOUTHERN FARM BUREAU, SUNRISE COMPANY, SUSAN VINEYARD, UNSECURED CREDITORS COMMITTEE,

Creditors.

88314 ONTARIO LIMITED, 52ND STREET FARM MARKETS, A&B BUILDING MAINTENANCE, A. BYRON PERKINS, A. C. HOUSTON LUMBER COMPANY, A.C. NEWMAN & COMPANY INSURANCE, A. C. PUMP SERVICE, INCORPORATED, A. D. FRESHOUR, A. J. AMENDOLA, A. LINC LANCET, A. N. SPENCER, A. WALLY SANDACK, A-1 FIRE EQUIPMENT, A-ALADIN

TRAVEL, A-Z OFFICE SUPPLY, AAA RENTALS, INCORPORATED, AABACO INDUSTRIES, INCORPORATED, AAR/NEWAY UNIFORM SUPPLY, AB & ASSOCIATES, ABACUS TEMPORARY SERVICES, INCORPORATED, ABLE LAWNMOWER SALES AND SERVICE, ABOUT TRAVEL, INCORPORATED, ABSOLUTE CLEANING COMPANY, ACCENT LANDSCAPING & PAVING, ACE ALTERNATORS, INCORPORATED, ACE HARDWARE, #2786F, ACE PRINTING COMPANY, ACKERLEY AIRPORT ADVERTISING, ACME DISPLAY FIXTURE COMPANY, INCORPORATED, ACME RESTAURANT SUPPLY, ADAM J. MICHAEL, ADOHR FARMS, INCORPORATED, ADRIAN GOLDSTEIN, ADRIAN MARSDEN, ADVANCED AMENITIES, ADVANCED TELECOMMUNICATIONS CORPORATION, ADVANCED TELEPHONE TECHNOLOGY, ADVANCED DRAINAGE SYSTEMS, INCORPORATED, ADVANTA LEASING CORPORATION, AIRBORNE FREIGHT CORPORATION, AJAX OF LOUISIANA, AJF LEASING, INCORPORATED, a division of AJF Warehouse Distributors, Incorporated, AL PACKER FORD WEST, ALAN C. FURTH, ALAN C. NEWMAN, ALAN D. HIURA, DDS, ALAN H. LAZARUS, ALAN G. DAVIS/AGD INVESTMENTS CORPORATION, ALAN G. GRAY, ALAN G. PEDERSEN, ALAN H. BEYER, ALANNAH SINCLAIRE, ALBERT G. SIMPSON, JR., ALBERT J. STODDART, ALBERT LEGITTINO, ALBERT R. SIMON, ALDO J. TEST, ALEX N. CAMPBELL, ALEX SHERMAN, dba A&S Coffee Services, ALFRED A. LEVIN, ALFRED SHAIN, ALL YOUR NEEDS MET, ALL CLEAR WINDOW CLEANING, INCORPORATED, ALLEN H. OGLANDER, ALLEN O. HUFF, ALLEN FREIDSON, ALLEN MERCHANT, ALLEN NEWTON, M.D., ALLEN T. BROWN, ALLEN W. SHARPE, ALLIE MAE, ALMAR CHEMICAL COMPANY, INCORPORATED, ALOE UP PALMS, ALTA DENA CERTIFIED DIARY, INCORPORATED, ALTERMAN STUDIOS, INCORPORATED, ALVIN H. BLAINE, ALVIN L. RUSSO,

ALVIN S. MORROW, M.D., ALYS M. BACHLER, AMBASSADOR FACTORS DIVISION OF FLEET FACTORS CORPORATION, AMERICA'S CHOICE COMPANY, AMERICAN COASTAL DEVELOPMENT CORPORATION, AMERICAN LINEN SUPPLY COMPANY, AMERICAN HOTEL REGISTER COMPANY, AMERICAN EXPRESS TRAVEL RELATED, AMERICAN LUMBER & SUPPLY, ANDERSEN & ASSOCIATES, ANDERSON ARMORED CAR SERVICE, INCORPORATED, ANDREW C. SMITH, ANDREW INGRAM, ANDREW J. FENADY, ANDREW KRISTO, ANDREW L. ANDERSON, ANDREW M. MASCIARELLA, ANDREW P. LOMBARD, ANDREW ROSSI, ANDY ZEHNDER, ANGELICA UNIFORM GROUP, ANHEUSER-BUSCH COMPANIES, ANITA FELLER, dba Anita's, ANITA VORHEES JACKSON, ANNABELLE SAFRAN, ANNANDALE GOLF CLUB, ANNENBERG CENTER AT EISENHOWER, ANNELY M. KLINGENSMITH, ANTHONY G. QUADROS, ANTHONY J. CARR, ANTHONY J. MARTINO, ANTHONY J. PORCELLO, ANTIGUA SPORTSWEAR, INCORPORATED, APPLAUSE, INCORPORATED, APPLIED TECHNOLOGY & MANAGEMENT, INCORPORATED, APPLIED SOIL MECHANICS, INCORPORATED, AQUA-SERV ENGINEERS, INCORPORATED, ARA SERVICES MAGAZINE & BOOK DIVISION, ARETA B. MCKENZIE TRUST, ARIZONA MANUFACTURING & EMBROIDERY, ARMIN F. STEINER, ARREST A PEST, ARROW LANDSCAPES & MAINTENANCE, INCORPORATED, ART & LETTER SERVICE, ARTESIA IMPLEMENT, ARTHUR B. HORTON, ARTHUR C. LINNEMEYER, ARTHUR C. SCHULER, ARTHUR E. BRANDT, ARTHUR E. NELSON, ARTHUR L. JACOBSON, ARTHUR MAGISTER, ASAP ICE, ASHELY D. HOFFMAN, ASHLAND CHEMICAL, INCORPORATED, ASIAN AMERICAN PARTNERS, ASSIST COMPUTER CONSULTANTS, ASSOCIATED UNIFORM RENTAL &

LINEN SUPPLY, INCORPORATED ASSUMPTION PARISH, AT ONCE TEMPORARY SERVICES, AT&T, ATKINSON POOL COMPANY, INCORPORATED, ATLANTIC SERVICES, INCORPORATED, ATLAS COATING COMPANY, INCORPORATED, AUBREY DEVINE, AUREUS LIMITED, AVID SPORTSWEAR, INCORPORATED

B&C TURF PRODUCTS, INCORPORATED, B&C SEAFOOD, INCORPORATED, B&M MAPS, B. D. CHAMAS, B. J. BUCHANAN, B. RENEE HAMEL, BAKER AUDIO, INCORPORATED, BANCBOSTON FINANCIAL COMPANY, BANCROFT-WHITNEY LAW PUBLISHERS, BANKSOUTH, N.A., BANNING ACE HARDWARE 5826S, BARBARA EDEN, BARBARA MARCHITELLI, BARBARA ROGERS, BARNEY J. BELLELI, BARRY M. TAYLOR, BARRY PRESSMAN, BARRY W. GENDELMAN, M.D., BASE DISTRIBUTORS, INCORPORATED, BAUER TIRE INCORPORATED, dba Goodyear Tire Center, BAUSCH & LOMB INCORPORATED, BAYLAUREL CORPORATION, a California corporation, BAYSHORE PUBLISHING GROUP, INCORPORATED, BEACHCOMBERS, INCORPORATED, BEAUMONT SAFE & LOCK, BEAUMONT TIRE & MUFFLER SERVICE, INCORPORATED, BELLE POINT DRAINAGE DISTRICT, #1, BELLERIVE COUNTRY CLUB, BELLSOUTH ADVERTISING & PUBLISHING COMPANY, BELLSOUTH COMMUNICATION SYSTEMS, INCORPORATED, BEN PON, BEN HOGAN COMPANY, BEN HARRIS, BEN E. KEITH FOOD COMPANY OF OKLAHOMA, BEN ARNOLD COMPANY, INCORPORATED, BEN F. NIEMAN, BEN RASKIN, BENTLEY PRITSKER, BENTON'S PAINT, INCORPORATED, BERIT FALGE, BERKELEY ELECTRIC COOPERATIVE, INCORPORATED, BERKLEY DAVID DESIGNS, BERLE MANUFACTURING COMPANY, BERMUDA DUNES COUNTRY CLUB, BERNARD A. SCHLIFKE, BERNARD DICKENS, BERNARD E. MCKUNE, BERNARD P. KIRKPATRICK, BERNICE

BUSH-POPE, BERNIE'S CUSTOM CLEANING, INCORPORATED, BERT FULLER, BETSY B. BENNETT, BETTIE GRESHAM YODER, fka Bettie Gresham Glover, BETTY BELDEN PALMER, BEVERLY ANN RILEY, BEVERLY E. HAMILTON, BEVERLY F. DAROCZY, Trustee, BIG "A" AUTO PARTS, INCORPORATED, BIG CANYON COUNTRY CLUB, BIGGERS BROTHERS, INCORPORATED, BILL D. CATES, BILL D. SAXON, BILL HAWKS, BILL MORRIS, BILL SIMPKINS, dba Re'Al Sportswear, BILL SLIFER, BILL STUBBS, BILLY G. FIELDER, BILLY R. AUSTIN, BILLYE R. AUSTIN, BILLY'S PINESTRAW, BIOTECH PRODUCTS, INCORPORATED, BJARNE QVALE, BLACKIE SERVICES, BLANCHARD MACHINERY COMPANY, BLP MOBILE PLANT – LA PLACE, BLUE FLAME GAS COMPANY, INCORPORATED OF CHARLESTON, BMI SYSTEMS CORPORATION, BOAST, INCORPORATED, BOB G. ALEXANDER, BOB MANFRE, BOBBIE PRECKWINKLE, BOBBY M. CLARK, BOBBY PEULAUD, BOBWHITE SPECIALISTS, INCORPORATED, BOCA TIRES, INCORPORATED, BOHEMIAN DISTRIBUTING COMPANY, BOHICKET YACHT CHARTERS, BOMARC PAPER & PACKAGING INCORPORATED, BOOSE, CASEY, CIFLIN, LUBITZ, MARTIS, MCBANE & O'CONNELL, BORDELON & HILL, BOSTON TRADING LIMITED, INCORPORATED, BOUCHEREAU OIL COMPANY, BOURG SIGNS, BOYD L. JEFFERIES, BOYNTON PUMP & IRRIGATION SUPPLY, BRADFORD A. CARL, BRADFORD KING KROHA, BRADLEY HEATING & AIR CONDITIONING, INCORPORATED, BRADLEY K. PENCE, BRAUN/A-1 LINEN SERVICE, BRENT S. ENRIGHT, BRIAN MILLEMAN, BRIAN O. SHANNON, BRIAN W. HOLMES, BRIGMAN FOODS, INCORPORATED, BRITISH OPEN FOR J&F, BROWNIE'S BLUEPRINT COMPANY, INCORPORATED, BROWNING FERRIS INDUSTRIES, BRUCE A. KAPLAN, BRUCE C. ANDERSON, BRUCE C. RICHARDS, BRUCE D. GRAY, BRUCE G. SCHWARTZ, BRUCE GALVANEK, BRUCE J.

HOESMAN, BRUCE L. DOW, BRUCE M. GALLAHER, BRUCE R. BAUMANN, BRUCE ROLLICH, BRUCE ROTHMAN, BRUCE S. CRAMPTON, BRUCE W. FRANKLIN, BRUNO A. GIORDANO, BRUNO BURKLIN PHOTO, BRYAN R. GERSTEL, BRYANT FINANCIAL CORPORATION, BUCKHEAD BEEF COMPANY, INCORPORATED, BUD D. KLEIN, BUILDERS SQUARE, BURBERRY/BIDERMANN INDUSTRIES, BURBERRYS WHOLESALE LIMITED, BUSH BROTHERS PROVISION COMPANY, BUSINESS BASICS, BUTLER BOX & STAKE, INCORPORATED, BUTLER NATIONAL GOLF CLUB, BUTLER PAPER COMPANY, BUTTERFLY FLOWER SHOP, BYRON RONALD MILLER

C&H DESIGNS, C&S FURNITURE RENTALS, C&S SOVRAN COMMERCIAL CORPORATION, fka C&S Commercial Corporation, C. ANNETTE HARVEY, C. COURTNEY WOOD, C. DWAINE CARVER, C. E. SINGLETON, C. KENNETH SUGLER, C. MARVIN MAY, C. R. BROWN, C. W. SPANGLE, CABLE & CONNECTOR WAREHOUSE, INCORPORATED, CACTUS COVE SEAFOODS, INCORPORATED, CALI-FAME OF LOS ANGELES, INCORPORATED, CALIFORNIA COUNTRY CLUB, CALLAWAY GOLF, CALYX & COROLLA, INCORPORATED, CAMELOT NURSERIES, INCORPORATED, dba Mountain States Wholesale Nursery, CAMPBELL'S LIGHTING & SIGNS, CANNINGS BREA HARDWARE, INCORPORATED, CANNINGS SEA FOODS, INCORPORATED, CAPITAL FACTORS, INCORPORATED, CARCOMM, INCORPORATED, CARDINAL PAPER COMPANY, CARL A. JONSON, CARL E. BROOKS, CARL EUGENE FRANKLIN, CARL T. WILLINGHAM, CARLOS LEITE, CARLSON TRAVEL NETWORK, CARMEL VALLEY RANCH REAL ESTATE COMPANY, CAROL B. PLUMMER, CAROL SLIFER, CAROLINA GOLF CAR SYSTEMS, CAROLINA MOUNTAIN WATER, INCORPORATED, CAROLINA RETAIL PACKAGING, INCORPORATED, CAROLINA SOUND COMMUNICATIONS,

CAROLINA SUPPLIES & CEMENT COMPANY, INCORPORATED, CAROLINA TURF FARMS, INCORPORATED, CAROLINAS CHAPTER – M.P.I., CAROLYN CRIST, CAROLYN H. HUNT, CARR EXTERMINATING COMPANY, CARR PAPER COMPANY, INCORPORATED, CARRIE SMITH, CARRIER CORPORATION, CARYL E. ORANGES, CATHEDRAL CITY POSTAL COMPANY, CATHERINE G. CROMER, CAVANAUGH ELECTRIC, CELLULAR ONE, CENTRAL CONTROL COMPANY, CENTRAL OKLAHOMA PRODUCE SERVICE, CHANDLER CONSTRUCTION COMPANY, CHARLENE DIMOND, CHARLES CHIPS OF PALM BEACHES, INCORPORATED, CHARLES A. BONNETT, Doctor, CHARLES A. POTTER, CHARLES B. MONTGOMERY, CHARLES D. EDISON, CHARLES D. SHUBIN, CHARLES E. NOREEN, CHARLES F. ADAMS, CHARLES F. WEHRLY, CHARLES F. WENDT, CHARLES GILBERT COLBY, CHARLES GIORNESTO, JR., CHARLES H. BOOTH, JR., CHARLES H. BROCK, CHARLES HARRIS, CHARLES HOUGH, CHARLES KAMPINSLI, CHARLES L. MCCUBBINS, CHARLES L. RUPPERT, III, CHARLES M. MCCORKLE, CHARLES MERTEN, dba Studs & Duds, CHARLES N. VAUGHN, CHARLES R. WINTERROWD, CHARLES V. KLINE, CHARLES GRENADIER, CHARLES P. FALCONE, CHARLES PIUS, CHARLES R. REED, CHARLES R. STARR, CHARLES SCHWARTZ, CHARLES SNYDER, CHARLES WEISBERG, CHARLESTON PAPER COMPANY, CHARLESTON NEWS COMPANY, CHARTER GOLF, INCORPORATED, CHEM-DRY OF COACHELLA VALLEY, CHERRY VALLEY SANITATION SERVICE, INCORPORATED, CHERYL M. HUDAK, CHERYL SAVAGE, CHESTER R. SAZENSKI, CHIEF SIGN CRAFTS, CHONG HOON KIM, aka (Tom) Chong Hoon Kim, CHRIS M. PEDERSEN, CHRIS MALETIS, III, CHRIS PALLES, CHRISTINE & ROB'S, INCORPORATED, CHRISTINE CORONA, CHUNG BAE, CHURCH DIALING COMPANY, INCORPORATED, CHURCH CREEK

NURSERY, INCORPORATED, CIMTEX, INCORPORATED, dba Roche, CINDY BAKER, CINDY GUILLOT, CINDY SEBALD, CITIBANK LEASING CORPORATION, fka Caribank Leasing Corporation, CITIZENS INVESTMENT CORPORATION, CITY OF BREA, CITY OF MORENO VALLEY, CITY OF OKLAHOMA WATER RESOURCES DEPARTMENT, CITY OF EDMOND, OKLAHOMA, CITY ELECTRIC, INCORPORATED, CITY OF RANCHO MIRAGE, CITY OF TULSA, CITY OF OKLAHOMA, CITY SEA FOODS, INCORPORATED, CLAIR E. LEEDOM, CLARENCE H. FOSSIER, M.D., CLARENCE J. FERRARIE, JR., CLASSIC APPAREL, CLASSY BASKETS & EDIBLES, CLAUDE ELLENA, CLAYTON D. RUSSELL, CLEANING WIZARDS, CLIFF N. MORTENSEN, CLIFFORD A. MORTON, CLIFFORD C. CRANDALL, CLIFFORD H. EVANS, CLIFFORD L. GANT, CLIFFORD SEWELL, CLIPPER UNLIMITED, INCORPORATED, CLUB CAR, INCORPORATED, CNA INSURANCE COMPANY, dba Transportation Insurance Company, COACHELLA VALLEY MOSQUITO ABATEMENT DISTRICT, COACHELLA VALLEY PUMP & SUPPLY, INCORPORATED, COACHELLA VALLEY WATER DISTRICT, COASTAL VIDEO REPAIR, COATS VIYELLA, COBRA GOLF, INCORPORATED, COFFEE SERVICE COMPANY, COLE HAAN, COLLEEN ANNE GALAVIZ, COLLEGE HOUSE, INCORPORATED, COLORADO LEISURE SPORTSWEAR CORPORATION, COLUMBIANKNIT, INCORPORATED, COM SER COMPANY, COMMERCIAL FACTORS OF MINNESOTA, COMMERCIAL LINEN SUPPLY, COMPLETE BUSINESS SYSTEMS, INCORPORATED, COMPUTERIZED SECURITY SYSTEMS/WINFIELD LOCKS, INCORPORATED, COMPUTERLAND, COMPUTERS FOR TRACTS, INCORPORATED, CONAGRA, INCORPORATED, dba Mapelli Food Distribution Company, CONCO FOOD SERVICE, CONNIE D. WILSON, CONNIE P. SIEGAL,

CONNIE W. JOHNSON, CONRAD LOPES, CONSOLIDATED WHOLESALE COMPANY, CONSOLIDATED FOOD SERVICE COMPANIES, CONSOLIDATED ELECTRICAL DIST., INCORPORATED, CONTINENTAL BAKING COMPANY, COOPERRIDER FAMILY TRUST, COR O.1 REFINERY, CORBIN, LIMITED, CORRINE PATTON MARTIN, COUNTY CHEMICALS OF RIVERSIDE COUNTY, COUNTY OF RIVERSIDE, TREASURER TAX COLLECTOR, COUNTRY CLUB PUBLICA, County Club Publications, Incorporated, COUNTRY CLUB SALES, COVINGTON COUNTRY CLUB, COVINGTON TECHNOLOGIES, COWIN E. ROBERT, CP COMMUNICATIONS, INCORPORATED, CRAIG E. KREIBICH, CRAIG E. VOLLHABER, CRAIG RIDENOUR, CREIGHTON LACEY-BAKER, CRAVENS AUTO ELECTRIC COMPANY, CROSS CREEK APPAREL, INCORPORATED, CTI/CREATE THE IMAGE, INCORPORATED, CULLIGAN WATER CONDITIONING, CURTIS F. WAHL, CURTIS L. NORMAN, CUSACK WHOLESALE MEAT COMPANY, CUSTOM GOLF CLUBS, CYNTHIA L. BUSBY, CYPRESS ELECTRICAL CONTRACTOR, INCORPORATED, CYRK, INCORPORATED

D&V CARTING INCORPORATED, D&S REBUILDERS, INCORPORATED, D. A. FROMDAHL, D. ARTHUR SANCHEZ, D. B. MCLELLAN, D. C. VIENT, D. EUGENE MOENCH, D. GENE MCCRORY, D. MARK GOODING, D. MICHAEL JONES, D. WENDELL DICKEY, DAILEY-FOTORNY, INCORPORATED, DAIWA GOLF COMPANY, DALE A. NORGREN, DALE HAASE, DALE HUSS, DALE WIGLEY, DALE NORENEN, DAN WALDOCH, DAN J. AGNEW, DAN J. REEVES, DAN L. CARLIN, DAN W. LYONS, DANIEL E. WILKEN, DANIEL MILOSEVICH, DANIEL P. DECLARK, DANIEL W. SHEPARDSON, DANIEL V. WALDOCK, DANKA LEASING, DANKA BUSINESS SYSTEMS, INCORPORATED, DANN DEE DISPLAY FIXTURES, DANNY S. LASKOWITZ, DARLA J.

KERSHAW, DARLYN DESIGNS, INCORPORATED, DARRELL J. WILLIAMS, DARRYL ELLINGSON, DAVE YOUNGQUIST, DAVID & BARBARA SENESCU, DAVID A. MARKMAN, M.D., DAVID ARCHER BAND, DAVID BRIAN BOGGS, DAVID C. FARR, DAVID L. HOTT, DAVID L. STEFFY, DAVID MARKEL, DAVID E. BURTON, DAVID E. PALM, DAVID FARNELL, DAVID H. HAYES, DAVID J. DEMAINE, DAVID J. MONAGHAN, DAVID J. STORSTAD, DAVID L. CSNIKSHANK, DAVID L. MITCHELL, DAVID L. WELCH, DAVID ROBERT CLARK, DAVID R. FOSTER, DAVID R. SANDBERG, DAVID C. JAMES, DAVID C. MALPASS WAREHOUSE, INCORPORATED, DAVID DAVIES, DAVID E. TIERNEY, DAVID FRANCESCHINI, DAVID ARCHER, DAVID M. CHAPMAN, DAVID S. LEWIS, DAVID SMITH/M O M/ATLAS CAPITAL, DAVID T. SARI, DAVID W. FLEMING, DAVID WILLIAM RALSTON, DAVIS PIPE & SUPPLY, INCORPORATED, DAVIS & COMPANY, DE CASTRO, WEST, CHODOROW & BURNS, INCORPORATED, DEAN BOWERS FARMS, DEAN SPALDING, DEBBIE WALKER, DEBRA ANN HILL, DEBRA TURF AND INDUSTRIAL, DECRATREND CORPORATION, DEE'S GRAPHIC SUPPLY, DEGESHC AMERICA, INCORPORATED, DEL MONTE AVIATION, INCORPORATED, DELI DELITES DISTRIBUTING COMPANY, DELTA AIRLINES, INCORPORATED, DEMPSEY MORK, DENNIS A. ALEKEL, DENNIS E. BALE, DENNIS EDWARD NEUSHUTZ, DENNIS R. SIBSON, DERRICK W. BROWN, DDS, DERRYL COUSINS, DESERT BUSINESS MACHINES, DESERT FIRE EXTINGUISHER COMPANY, INCORPORATED, DESERT GOLF DISTRIBUTORS, INCORPORATED, DESERT HORIZONS, INCORPORATED, DESERT PRINTING COMPANY, INCORPORATED, DESERT STEAM CLEANING COMPANY, DEVANT, LIMITED, DEVOE & RAYNOLDS, DEWE ROGERSON, INCORPORATED, DIANA C. LA PIERRE, DIANE N. SAUNDERS, DICK LYTLE, DICK W.

BOYCE, DICK'S TIRE MART, DICK'S VW FOREIGN & DOMESTIC, DISCOUNT HARDWARE, DIVOTS SPORTSWEAR COMPANY, DIXIE ELECTRONICS, INCORPORATED, DIXIENSURANCE, INCORPORATED, DIXON TRAVEL AGENCY, DON D. TOBEY, DON HAMBLIN, DON & HEIDI BROWN, DON JONES, dba Mesa Lawn Maintenance, DON K. EDEN, DON R. HAGLER, DON WADE, DONALD A. BENNETT, DONALD A. BUNCH, DONALD A. DONOVAN, DONALD A. PELTON, DONALD A. LEWIS, DONALD A. PELTON, DONALD A. WHITNEY, DDS, DONALD BOGDON, DONALD CISNEY, DONALD D. DOTY, M.D., DONALD D. RANDALL, DONALD DAVIDSON, DONALD E. FOLEY, DONALD G. ELLIS, DONALD G. WHITMAN, DONALD J. HOLM, DDS, DONALD J. MCGLYNN, DONALD J. TROY, DONALD KELLEHER, DONALD L. JEFFERS, DONALD L. ROBINSON, DONALD L. WILKERSON, DONALD R. MARKLAND, DONALD R. REISFIELD, DONALD R. ROBINSON, DONALD R. WADE, DONALD RAY CHASE, DONALD S. LIEBMAN, DONALD S. MACKINNON, DONALD T. BELDOCK, DONALD W. MANLOWE, DONNA WICKSELL, DORI G. CREE, DORIS SCHAFFER, DOROTHY NADINE PACE, DOUGLAS A. WILLIS, DOUGLAS B. MCLELLAN, DOUGLAS K. DUSENBURY, DOUGLAS P. VELING, DOUGLAS R. MORRICE, DOUGLAS VIENT, DOUGLAS W. FLATT, DOUGLAS WOOD & ASSOCIATES, INCORPORATED, DOWDLE, INCORPORATED, dba General Air, DOW JONES & COMPANY, INCORPORATED, DR. JAMES G. SUNDERMAN, DR. & MRS. JAMES S. MANION, DRITEC, INCORPORATED, dba Auto Flow & Systematic Services, DUANE A. LONG, DUANE R. JACOBS, DUANE TERRY COMPANY, INCORPORATED, DUNCAN INSTITUTIONAL FOODS, DUNLOP SLAZENGER CORPORATION, DUNMORE HOMES OF SOUTHERN CALIFORNIA, DURHAM HOSIERY MILLS, INCORPORATED, DURHAM MEAT COMPANY, DURWARD A.

LYON, DURWARD A. YOUNGBLOOD, DWAINE L. CANOVA, DWIGHT L. STUART

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D. WILLIAMS, ROGER G. COOPER, ROGER L. GOLDENBOGEN, ROGER L. RAMSEY, ROGER MAKEMSON, ROGER R. BLAEMIER, ROGER SNELLENERGER, ROGER TALLAKSON, RODNEY W. MULLER, Doctor, ROLAND OSGOOD, ROLFES TRAVEL, ROLM COMPANY, RON MILLER ASSOCIATES, INCORPORATED, RON'S TRACTOR SERVICE, dba Ron Fletche, RONALD A. NOLTE, RONALD HANSEN, RONALD J. APEL, RONALD J. RADIN, RONALD JAY COHEN, RONALD L. JUNKIN, RONALD L. WADLEY, RONALD NELSON, RONALD R. WALLACE, RONALD T. VANDERBEEK, RONALD W. RUSSELL, RONNA ROSSMAN, ROSCOE O. STEWART, ROSEANN T. ANDERSON, ROSEN'S ELECTRICAL EQUIPMENT COMPANY, ROSENTHAL & ROSENTHAL, INCORPORATED, ROSS A. SHADE, ROSS H. SMITH, ROSSIE M. COLTER, dba Assistance, ROTO ROOTER PLUMBING & DRAIN SERVICE, ROWLEY COMPANY, INCORPORATED, ROY E. WHITLEY, ROY EDWELL WITCHER, ROY HAMADA, ROY YOTARO HAMADA, ROYAL CUP, INCORPORATED, ROYAL GARDENS HOMEOWNERS ASSOCIATION, ROYAL TIARA TOWELS, RUANE MCQUINN, RUCK & AUTO SUPPLY, INCORPORATED, RUSSELL E. HAND, RUSSELL L. KRODELL, RUSSELL L. LONG, RUSSELL RAY HEYSELL, RUSSELL ROEHRKASSE, RUSTON E. T. GOEPEL, RUTH B. GLOVER, RUTH DANOFF, RUTH DEBARDAS, RUTH GRUBER, RUTH H. ADAMS, RYDER TRUCK RENTAL, INCORPORATED

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SERVICES, INCORPORATED, SAFETY-KLEEN CORPORATION, SAINT MARTINS HOMEOWNERS ASSOCIATION, SAL PUGLISI, SALAMINDER, INCORPORATED, SALANT CORPORATION, SALVATORE APRILE, SAM ALACANO, SAM E. AUSTIN, SAM E. ROSE, aka Bud, SAM H. HENNING, SAN FRANCISCO NEWSPAPER AGENCY, SAN GABRIEL COUNTRY CLUB, SANDRA L. BENDON, SANDRA S. HALE, SANDY DUFTLER DESIGNS, SANFORD H. BOSWORTH, SANTA ROSA COVE ASSOCIATION, SANTA ROSA GOLF & COUNTRY CLUB, SAWAI MAKOTO, SCHUYLER C. JOYNER, SCIONEAUX, INCORPORATED, SCOTT E. WAGONER, SCOTT S. BIRD, SCOTT VERPLANK, SCOTT W. FALKNER, Painting Contractor, SCOTTY'S SPORT SHOP, SCP GOLF COURSE SUPPLY, SCREENPRINT/DESIGN, INCORPORATED, SE YOUNG YOON, SEA ISLANDS ELECTRIC, INCORPORATED, SEACLIFF COUNTY CLUB, SEALOFLEX, INCORPORATED, SEAR COMMERCIAL CREDIT CENTER, SEIGELS, INCORPORATED, SELDON RING, SELECT MEATS, SEPTIC SANITATION EXPERTS, SEQUOIA HORTICULTURAL PRODUCTS, SERGIO TACCHINI, TODDL, CROSS FUSION, SERVICE AUTO PARTS, SERVICE PARTNERS, INCORPORATED, adb Hyman's Wholesale, SESSIONS & FISHMAN, SETON NAME PLATE CORPORATION, SHARE CORPORATION, SHARON BURTON, SHARON L. HAMILTON, SHARON Z. WOOD, JR., SHARRON R. TROY, SHARYN BERNSTEEN, SHEET METAL SERVICE COMPANY, SHELTON JAY DILLER, SHENG-PU LEE, SHERIAN A. HARRINGTON, SHIGERU KUBOTA, SHINTA ASAMI, SHIRLEY A. BEATON, SHIRLEY D. CAIN, SHIRLEY PORTER MCGINTY, SHOT SELECTOR, INCORPORATED, SHREVEPORT COUNTRY CLUB, SHUJAUDDIN M. AHMAD, SI COMAR, SIARC, INCORPORATED, SID H. ELIASON, SIDNEY GRUBER, SIDNEY PEIZER, SIERRA PUMPING SYSTEM, SILICONE SPECIALTIES,

INCORPORATED, SSI, SIMMONS & WHITE, INCORPORATED, SIMPLEX TIME RECORDER COMPANY, SIR CHRISTOPHER HATTON, INCORPORATED, SIR SPEEDY PRINTING, SLIDELL OIL COMPANY, INCORPORATED, SMART ADVERTISING, INCORPORATED, SMITH TURF & IRRIGATION COMPANY, SMITH FIRE SUPPRESSION, INCORPORATED, SOLLY ROBINS, SOMERS MARKETING, INCORPORATED, SOONER AIRGAS INCORPORATED, SOONERS AND COMPANY, SOSMETAL PRODUCTS, INCORPORATED, SOUTH FLORIDA PGA, SOUTH CENTRAL SECTION OF THE PGA, INCORPORATED, SOUTH CENTRAL BELL TELEPHONE COMPANY, SOUTH STAR PRODUCE, SOUTH CAROLINA TAX COMMISSION, SOUTHEAST TIRE & SERVICE, INCORPORATED, SOUTHEASTERN PROTECTION SERVICES, SOUTHEASTERN SURVEYING, INCORPORATED, SOUTHERN BELL TELEPHONE COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN FARM BUREAU, Southern Farm Bureau Insurance Company, SOUTHERN LUMBER & MILLWORK CORPORATION, SOUTHLAND SIGNS & DESIGNS, SOUTHWELL LABORATORY, INCORPORATED, SOUTHWEST AQUATICS (CHEM-GRO CORPORATION), SOUTHWEST IRRIGATION COMPANY, SOUTHWESTERN STATIONERS, INCORPORATED, SOUTHWESTERN BELL TELEPHONE COMPANY, SPALDING, INCORPORATED, SPEC TECH, INCORPORATED, SPECIAL EDITIONS PUBLISHING, SPECIALTIES, INCORPORATED, SPECIALTY GOLF COURSE SUPPLIES, SPEEDO/WHITE STAG SKI DIVISIONS OF S. ACQUISITIONS CORPORATION, SPEEDY DELIVERY SERVICE, SPENCER BROWN, SPENCO MEDICAL CORPORATION, SPORTIF, USA, SPRING ELECTRIC, INCORPORATED, ST JOHN THE BAPTIST, ST. TAMMANY DRAINAGE DISTRICT #1, ST. TAMMANY CLERK OF COURT, STAN A. SUTHERLAND,

STAN DUDAS, STANDARD TRUCKING COMPANY, STANFORD SANOFF, STANFORD TISCHLER, STANLEY A. BEIDEMAN, STANLEY E. BLAIR, STANLEY ROSS, STANLEY SCHAFFER, STATE BOARD OF EQUALIZATION, STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, STATE OF FLORIDA, STATE OF LOUISIANA, STATE OF LOUISIANA DEPARTMENT OF REVENUE AND TAXATION, STEPHANIE A. BROWN, STEPHANIE B. GEBERT, STEPHEN BROWN ASSOCIATES, INCORPORATED, STEPHEN C. GROAT, STEPHEN KIDDOO, STEPHEN L. MCELRATH, STERLING CALL, STERLING MOUNT, STERLING R. LOUNT, STEVE C. DUNE, STEVE CHARTON, STEVE CONNOLLY SEAFOOD COMPANY, INCORPORATED, STEVE DIMOND, STEVE GFELLERS, STEVE H. ADAMS, STEVE M. ALBERS, STEVE RADFORD, STEVEN A. BERNFELD, STEVEN A. RICE, STEVEN B. GREENFIELD, STEVEN C. BRYANT, STEVEN H. ADAMS, STEVEN O. SPAULDING, STEVEN SAPOS, STEVE'S OFFICE SUPPLY, STEVE'S WHOLESALE DISTRIBUTORS, INCORPORATED, STILLWATER COUNTRY CLUB, INCORPORATED, STOCKWELL & BINNEY, STOFFEL SEALS CORPORATION, STRAHORN LANDSCAPING COMPANY, STRATTON R. EASTER, M.D., STAN A. SUTHERLAND, STREETS, INCORPORATED, STROBEL TIRE #3, STROEBE, ZINE & ASSOCIATES, STUART CASE, STUART B. WILSON, SULLIVAN ELECTRIC & PUMP, INCORPORATED, SUMTER SMALL ENGINE, INCORPORATED, SUN MOUNTAIN SPORTS, INCORPORATED, SUN REFINING & MARKETING COMPANY, SUN WORLD DISTRIBUTORS, SUN COMPANY, INCORPORATED, SUNBELT COCA-COLA BOTTLING COMPANY, INCORPORATED, SUNDANCE LIGHTING, SUNDERLAND OF SCOTLAND, SUNNYMEAD HARDWARE, SUNNYSIDE FARMS, SUNRISE DESERT PARTNERS, SUNRISE FORD

TRACTOR COMPANY, SUNSHINE SAFE & LOCK, SUNSHINE GOLF, INCORPORATED, SUNSHINE EQUIPMENT COMPANY, INCORPORATED, SUPERIOR OFFSET, INCORPORATED, SUPERIOR PIPELINE, SUSAN J. ABRAHAM, SUSAN VINEYARD, SWEENEY, INCORPORATED, SWIFT TRANSPORTATION COMPANY, INCORPORATED, SWINGTRAC INCORPORATED, SYSCO FOODS SERVICES OF L.A., INCORPORATED

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EXCHANGE, THE DENMAN COMPANY, INCORPORATED, THE DOOR CENTER, THE EDIT CENTRE, THE LOCK SHOP, INCORPORATED, THE NELSON PRINTING CORPORATION, THE OLYMPIC CLUB, THE PAPER STORE, THE PHOENIX INSURANCE COMPANY, THE PLANT MART, THE RANCH COUNTRY CLUB, THE RUG AND CARPET OUTLET, INCORPORATED, THE COPIER STORE, THE LONG TERM CREDIT BANK OF JAPAN, LIMITED, THE MUSKOGEE COUNTRY CLUB, INCORPORATED, THE PRINT SHOP, INCORPORATED, THE SEVEN-UP COMPANY, THE STANDARD REGISTER COMPANY, THE TRAVELERS INSURANCE COMPANY, THE GOOD LIFE PEOPLE, INCORPORATED, THE WATERFORD HOTEL, THEODORE WILLIAM WITALIS, THERMAL PRODUCTS, INCORPORATED, THOMAS A. SEATON, THOMAS C. SIFFERMAN, THOMAS C. SWENDSON, THOMAS D. GRIFFIN, THOMAS D. NOBLE, THOMAS DREW MURPHY, THOMAS E. HEADRICK, THOMAS E. KENDALL, THOMAS E. PELINO, THOMAS F. CROSBY, JR., THOMAS F. MURPHY, THOMAS G. MOFFAT, THOMAS G. MOORE, THOMAS H. JAMISON, THOMAS J. CALLAN, THOMAS J. CULLIGAN, THOMAS J. MACKIMM, THOMAS J. MAZELIN, THOMAS K. MAHONEY, THOMAS M. BEGG, THOMAS MALETIS, THOMAS MINICHIELLO, THOMAS P. LEACH, THOMAS P. PETERS, THOMAS R. CARSON, THOMAS R. CULLINAN, THOMAS ROSENQUIST, THOMAS S. WILSON, THOMAS V. GIRARDI, THOMAS W. BECK, THOMAS W. O'GWYNN, THOMAS W. PURTZER ENTERPRISES, INCORPORATED, THOMAS WILLETTE, THOMPSON PUMP & WELLPOINT SYSTEMS, INCORPORATED, THOMSON NEWSPAPER, INCORPORATED, dba The Advertiser, THREE OAKS LANDSCAPE NURSERY, INCORPORATED, TIM ASARO, TIMBERLAKE COUNTRY CLUB, TIME & SOUND, INCORPORATED, TIMOTHY C. BLACK, TIMOTHY J. SMITH, TIMOTHY L.

SKOGEN, TLC FLORIST & GREENHOUSE, INCORPORATED, TLS PARTNERSHIP, TOBY C. PAGE, TODD R. KIRSCHNER, TODD STEINER, TOM C. H. KIM, TOM HOCH INTERIOR DESIGNS, INCORPORATED, TOM KELLY, TOM MACKINNON, TOM R. MCGANNON, TOM ROSENQUIST, TOMCO CHEMICALS, TOMMY ARMOUR GOLF COMPANY, TOMMY'S DESIGNS, TOMS RIVER COUNTRY, TONY NAKAZAKI, TOP MATERIALS DISTRIBUTING, INCORPORATED, TOPS N BARRICADES, INCORPORATED, TORRENCE'S FARM IMPLEMENT, TOTES, INCORPORATED, TOUCAN HATS & ACCESSORIES, TOYS BY DAPHNE, INCORPORATED, TRAVEL NETWORK, TRAVEL RESOURCES MANAGEMENT GROUP, INCORPORATED, TRAVEL AGENTS INTERNATIONAL, TRAVEL MART, TRAVEL TALES, INCORPORATED, TRAVELERS INSURANCE, TRAYCO, INCORPORATED, TRI PARISH TROPHIES, TRI-COUNTY ICE & FUEL COMPANY, TRI-STATE GROUP, INCORPORATED, TRIANGLE DISTRIBUTING COMPANY, INCORPORATED, dba Heimark Distributing Company, TRIDENT PRODUCTIONS, INCORPORATED, TROCKI ENTERPRISES, INCORPORATED, TROJAN BATTERY COMPANY, INCORPORATED, TROPHIES BY EDCO, INCORPORATED, TROPICAL PLANT DESIGN, INCORPORATED, TRUST COMPANY BANK, TRYGVE B. LODRUP, TULSA CLUB SUPPLY, TURF SEED, INCORPORATED, TURFMAKERS, INCORPORATED, dba The Cameron Company, TWIGHT FAMILY TRUST, TWO LAKES PARTNERS

U. S. BATTERY-CORONA, U. S. LINC, INCORPORATED, UNIFORMS TO YOU, UNIGLOBE CAROLINA TRAVEL, UNIJAX, UNION BANK, UNION SEA FOODS, INCORPORATED, UNISA AMERICA, INCORPORATED, UNISYS CORPORATION, UNISYS FINANCE CORPORATION, UNITED ARTISTS REALTY COMPANY, UNITED BANKCARD, INCORPORATED, UNITED PARCEL SERVICE, UNITED SPECIALTIES, UNITED STATES

POLO ASSOCIATION, UP FRONT DESIGNS, INCORPORATED, US CABLE, US SPRINT COMMUNICATIONS COMPANY, US POSTAL SERVICE, USA TODAY, USG SOUTHEAST, UTILITY AIR CONDITIONING, INCORPORATED

V. B. ANDERSON COMPANY, VAHE SIMONIAN, VALLEY HARVESTING, INCORPORATED, VALLEY OFFICE EQUIPMENT, INCORPORATED, VALLEY WIDE EQUIPMENT RENTALS & SALES, VAN REX GOURMET FOODS COMPANY, INCORPORATED, VAN WATERS & ROGERS, INCORPORATED, VANCE C. MINTER, VELDA FARMS, INCORPORATED, VELDA M. APPLEBEE, VENDOME HEADWEAR, VERLA C. BROWNING, VERNON JUERGENS, VERNON M. LEWIS, VERNON R. VERON, VICTOR H. SCHOLFIELD, VIGORO INDUSTRIES, INCORPORATED, VIKING AUTO CENTER, INCORPORATED, VIKING TRUCK TIRE CENTER, VILLAGE GARDEN, VILLIO ENTERPRISES, INCORPORATED, dba Imperial Printing, VINCENT COSMO TAURMINA, VINCENT J. SCHREIBER, VINCENT LENNON, VIRGIL C. MOE, VIRGINIA COUNTRY CLUB, VOSS ELECTRIC SUPPLY COMPANY

W. D. SCOTT GROUP, INCORPORATED, W. E. DUFF, Doctor, W. E. MITCHELL, W. FILLMORE WOOD, JR., W. H. CAINE, W. H. DAUM, JR., W. H. WOLFF, W. JAMES SAUL, W. L. SUTTON COMPANY, W. P. LAW, INCORPORATED, W. ROBERT WYMAN, W. STEWART THOMPSON, W. W. CAINE, W. W. GRAINGER, INCORPORATED, W. W. SMITH COMPANY, WALKER H. STRAUS, WALLACE COMPUTER SERVICES, INCORPORATED, WALLACE J. GROWNEY, WALLACE OSBURN LAUB TRUST, WALT OSGOOD, WALTER PALMER STUDIO, WALTER PALMER, WALTER BROWER, WALTER A. LOCKER, WALTER B. CHAHANOVICH, WALTER C. LORENZEN, WALTER DALE ABRAHAM, WALTER E.

WICMOT, WALTER F. COMBS, WALTER ISING, WALTER J. OSGOOD, WALTER J. PARKER, WALTER J. PORTER, WALTER L. PALMER, WALTER M. SCHROEDER, WALTER PELENSKY, WARD R. YOUNG, WARREN DRIVER, WARREN F. HOFFMAN, WARREN S. WEXLER, WARREN SQUIRES, WASHINGTON FLOOR COVERING, INCORPORATED, WASTE MANAGEMENT OF CHARLESTON, WASTE MANAGEMENT/PALM DESERT DISPOSAL, WATER SERVICES COMPANY, WATER UTILITIES SERVICES, INCORPORATED, WATERFORD OFFICE AREA I, WATSON & DAUGHTERS PLUMBING COMPANY, WATSON VAUGHN, WATSONVILLE COAST PRODUCE, INCORPORATED, WAVERLY COUNTRY CLUB, WAXIE'S ENTERPRISES, WAYNE A. LEBLAND, WAYNE D. STINNETT, WAYNE GEMAS, WAYNE H. LARSON, WAYNE THORSON, WAY'S GARAGE, INCORPORATED, WELDON, WILLIAMS & LICK, INCORPORATED, WELLINGTON ACE HARDWARE, INCORPORATED, WELLS FARGO BANK, WENDEL D. TATE, WENDELL MOREY, WEST ASHLEY CHURCH, WEST CENTRAL PRODUCE, WEST COAST FOODS, INCORPORATED, WEST GATE SHEET METAL, INCORPORATED, WEST PUBLISHING COMPANY, WESTERN FARM SERVICE, INCORPORATED, WESTERN GOLF INCORPORATED, WESTERN LAND PARTNERS I, a general partnership, WESTERN RESORT PUBLICATIONS, WESTERN TURF, WESTINGHOUSE ENVIRONMENTAL & GEOTECHNICAL, WESTLAKE HARDWARE, INCORPORATED, WGM/HYDRO, WHITEHURST ALUMINUM PRODUCTS COMPANY, WHITEWATER ROCK & SUPPLY COMPANY, WIGINTON FIRE SPRINKLERS, INCORPORATED, WILBUR-ELLIS COMPANY, WILLARD A. HUGHES, WILLARD L. SCHMIDT, WILLARD M. GILLIES, WILLIAM A. DALHAMER, WILLIAM A. GOTHARD, WILLIAM A. MOODY, WILLIAM A. TEIPNER, WILLIAM ANDREW EKLUND, WILLIAM BLAIR DALBEY, WILLIAM C.

BROWN, WILLIAM C. GARLAND, WILLIAM C. KELLOGG, WILLIAM C. NEESLEY, WILLIAM CHADNEY, WILLIAM CHAGARES, WILLIAM D. DAVIS & SONS, INCORPORATED, WILLIAM D. GWYNNE, WILLIAM DETRIXHE, WILLIAM DOYLE, WILLIAM E. DAHLBERG, WILLIAM E. DURRETT, WILLIAM E. GLENNON, WILLIAM E. NELSON, WILLIAM F. BAXTER, WILLIAM F. BLUM, WILLIAM F. LAWE, WILLIAM F. STRUB, JR., WILLIAM H. BROWN, JR., WILLIAM H. BURTON, WILLIAM H. CAINE, WILLIAM H. MADDEN, WILLIAM H. EICHENGREEN, WILLIAM H. SADLER, WILLIAM J. BEDFORD, WILLIAM J. HOLDMAN, DDS, WILLIAM J. MARLIN ESTATE, WILLIAM J. WILLIAMS, WILLIAM JARVIS, WILLIAM JOSEPH WOOD, WILLIAM L. CELLI, WILLIAM L. GREGORY, WILLIAM L. STURGEON, WILLIAM L. WALTER, WILLIAM M. BYRNE, WILLIAM M. GREEN, Doctor, WILLIAM M. MCCUNE, WILLIAM M. MORROW, WILLIAM M. SECOR, WILLIAM M. SCHWARTZ, WILLIAM MACGREGOR, WILLIAM MICHAEL HOPPE, WILLIAM N. TERPSTRA, WILLIAM P. GREEN, WILLIAM P. DONELAN, JR., WILLIAM P. KELLEY, WILLIAM P. PELENSKY, WILLIAM PENNINGTON, WILLIAM Q. CURRAN, WILLIAM S. GORMAN, WILLIAM T. PELLETIER, WILLIAM T. WILKINSON, WILLIAM R. BLAKELEY, M.D., WILLIAM R. HARRIS, WILLIAM R. HOLMES, WILLIAM REINHARD, WILLIAM S. SKEEN, WILLIAM SECOR, WILLIAM SELMAN, WILLIAM STAHL, WILLIAM O. PALMER, WILLIAM P. WRIGHT, WILLIAM W. GOW, WILLIAM & LAURA STAHL, WILLIAM W. STUART, WILLIAM W. VAN DYKE, WILLIAM WITTALL, WILLIE WOOD, WILLIS C. REICH, WILLOW CREEK COUNTRY CLUB, dba Hillcrest Golf & Country Club, WILMA B. MORGAN, WILSON RACQUET SPORTS, WILSON INABINET, WILSON SPORTING GOOD, WIND & RAIN SHIELD, INCORPORATED,

WINSTON L. ADAMS, WOODBELL COMPANY LIMITED, WOODBURY CHEMICAL COMPANY, WOODWARD-CLYDE CONSULTANTS, WORKSMAN TRADING CORPORATION, WORLD PAC TRADE CORPORATION, dba Pure Juice, WORLD TRAVEL SERVICE, WORLDWIDE DATA PRODUCTS, INCORPORATED, WP GROUP, dba Word Processing Group, WP LAW, INCORPORATED, WRENN HANDLING, INCORPORATED, WULBERN-KOVAL COMPANY, INCORPORATED, WWD CORPORATION, WYNN'S IGA

XEROX

YASUO JAYSON TERADA, YOICHI HATTORI, YONEX CORPORATION, YONG KIM, YOSHIAKI FUJIMOTO, YOSHIICHI ADACHI, YOUNG FAMILY TRUST, YUH C. YIM

ZEE MEDICAL SERVICE, a division of Boad Seven, Incorporated, ZELLERBACH, a Mead Company, ZENITH TRAVEL, INCORPORATED, ZUISHO HAYASHI

Claimants.

BUREAU OF INDIAN AFFAIRS, CLUB CORPORATION OF AMERICA, JOHN TRIANA, KSL RECREATION CORPORATION, MIKE MARTIN, MISSION HILLS EQUITY COUNTRY CLUB, INCORPORATED, MORGAN STANLEY REAL ESTATE FUND, L.P., NATIONSBANK INVESTMENT BANKING COMPANY, PALM BEACH POLO CLUB MEMBERSHIP ASSOCIATION, INCORPORATED, R. JENEANE TREACE, STANFORD RANCH, INCORPORATED, TOC, INCORPORATED, a wholly owned subsidiary of Virginia Investment Trusts

Respondents,

US Trustee,

Trustee

GARY BRAUN, WILLIAM E. CAMPBELL

Claimants.

D. SCOTT CONE, JOHN WILSON REED

Respondents,

Trustee

ROBERT H. HABANS, LAW FIRM OF GLASS & REED, LAW FIRM OF POPPER & POPPER, MOHAMAD MOTAHARI, MONROE C ROTHSCHILD, DAVID POPPER

Supreme Court, U.S.
FILED
JUL 17 1996
CLERK

No. 95-1855

In the Supreme Court of the United States

OCTOBER TERM, 1995

GERALD G. BARTON AND WILLIAM W. VAUGHAN, III,
PETITIONERS

v.

LANDMARK LAND COMPANY OF CAROLINA,
INCORPORATED

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that petitioners, former officers and directors of a failed savings and loan and its subsidiaries, were not entitled to indemnification from the subsidiaries for their costs in defending themselves against Office of Thrift Supervision civil penalty proceedings arising out of alleged wrongdoing by petitioners in their management of the failed institution.

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1855

GERALD G. BARTON AND WILLIAM W. VAUGHAN, III,
PETITIONERS

v.

LANDMARK LAND COMPANY OF CAROLINA,
INCORPORATED

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-33) is reported at 76 F.3d 553. The orders of the district court (Pet. App. 34-39, 40-52, 201-211, 213-214) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 1996. The court of appeals denied a petition for rehearing on April 2, 1996 (Pet. App. 56-199), and denied a motion for reconsideration of that petition on April 15, 1996. Pet. App. 53-55. The petition for a writ of certiorari was filed on May 15, 1996.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Gerald G. Barton and William W. Vaughan, III (petitioners) were directors of first and second tier subsidiaries (Debtors) of Oak Tree Savings Bank, S.S.B. (Bank), which was wholly owned by Landmark Land Company, Inc. (Landmark). In addition, Barton was chairman of the board of directors and chief executive officer of Landmark and the Bank, and Vaughan was a director and officer of the Bank. Pet. App. 6-7.

1. In June, 1990, the Office of Thrift Supervision (OTS) determined that the Bank was undercapitalized and had demonstrated a pattern of consistent losses.[1] On January 15, 1991, petitioners, as directors of the Bank, signed a Consent Agreement with the OTS, indicating that the Bank was near failure and an OTS takeover was imminent. In the Consent Agreement, petitioners agreed that the Bank's subsidiaries (the Debtors) would not enter into any material transactions without prior approval from OTS. Pet. App. 8. Nonetheless, on October 11, 1991, without securing OTS approval, the Debtors filed for bankruptcy in the United States District Court for the District of South Carolina. Pet. App. 6.

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[1] The OTS was created in 1989 in response to the crisis in the savings and loan industry, which occurred as the result of the failure of a number of undercapitalized savings and loan institutions. In order to prevent a similar crisis in the future, Congress endowed the OTS with the regulatory authority to ensure that savings and loan institutions remained adequately capitalized. Pet. App. 24.

Anticipating that the OTS would act quickly to take control of the Bank, the Debtors obtained a temporary restraining order and then a preliminary injunction from the bankruptcy court, preventing the Bank from exercising its shareholder rights to remove and replace the management of the Debtors. Pet. App. 8, 10. On October 13, 1991, the OTS took control of the Bank and appointed the Resolution Trust Corporation (RTC) to act as the Bank's receiver. Pet. App. 8. The RTC was not able to exercise its statutory right and duty to take control of the Debtors until the court of appeals lifted the injunction against the Bank on August 18, 1992. See *In re Landmark Land Co. of Oklahoma, Inc.*, 973 F.2d 283 (4th Cir. 1992).

2. In the meantime, in response to the bankruptcy filings, the OTS filed civil administrative charges against petitioners. The charges alleged that petitioners knew that filing for bankruptcy on behalf of the Debtors would impair the Bank's ability to collect on its lines of credit to the Debtors, and thus that petitioners breached their fiduciary duties as directors of the Bank. The OTS also charged petitioners with violating the terms of the Consent Agreement, alleging that the bankruptcy filings constituted material transactions made by the Bank's subsidiaries without OTS approval. As a result of these violations, the OTS assessed a civil penalty of $1 million against petitioners. Pet. App. 9.

3. During the eleven-month period in which the bankruptcy court injunction remained in effect and the Debtors' original boards of directors remained in control, petitioners arranged for the Debtors to pay for the fees and costs of their defense against the OTS charges. On March 26, 1992, the Debtors filed a

reimbursement motion requesting permission to use corporate funds to indemnify petitioners and others. Pet. App. 11. The district court held a hearing on the reimbursement motion on June 3, 1992, and still had the motion under advisement when the injunction was lifted and the RTC gained control of the Debtors. On September 12, 1992, after the injunction was lifted, the RTC replaced the Debtors' boards of directors. On November 5, 1992, the RTC moved to withdraw the reimbursement motion. However, the district court refused to permit the withdrawal because it had already heard argument and taken the motion under advisement. Pet. App. 12-13.

On May 27, 1994, the district court granted the reimbursement motion, finding "that the evidence demonstrates that the officers and directors of the Debtor companies sought the protection of the bankruptcy court in good faith." Pet. App. 51. Subsequently, on October 5, 1994, the court clarified its earlier order, holding that petitioners should be indemnified "if and when [they] prove by a preponderance of the evidence that they have incurred reasonable expenses in defending themselves for actions taken in good faith with the reasonable belief that such actions were not opposed to the best interests of the Debtor companies." Pet. App. 210.

4. The court of appeals reversed the district court's reimbursement order. Pet. App. 33. Applying the applicable state corporate codes, the court of appeals noted that a corporation must indemnify its agents for costs incurred while *successfully* defending themselves in a legal proceeding arising out of their service to the corporation. Where, as here, the agents have not (at least yet) completely vindicated themselves, the corporation may nonetheless choose to

indemnify them, but only if the agents "could have acted in good faith and in the best interests of the corporation [even] if the charges against [them] turn out to be true." Pet. App. 21. Thus, when "the agent's alleged misconduct, if true, demonstrates that the agent acted in bad faith, the * * * court should deny permissive indemnification" and should grant indemnification only if the agent subsequently succeeds on the merits, thus proving that the allegations of bad faith were false. Pet. App. 21-22.

Applying this standard to the instant case, the court of appeals noted that the district court did not articulate "how the [petitioners] could have acted in good faith if the OTS charges filed against them were true." Pet. App. 22-23. In fact, "[i]f the OTS charges are accurate, [petitioners'] action to place the Debtors in bankruptcy was a deliberate attempt to prevent the OTS from exercising control over the Bank's assets, thus hindering the OTS's ability to deal effectively with a failing savings and loan." Pet. App. 25. According to the OTS charges, petitioners "used the bankruptcy code to stymie the OTS, even though their action breached the Consent Agreement with the OTS and violated their fiduciary duties to the Bank." *Ibid.* The court therefore concluded that, if the OTS charges are true, petitioners did not act in good faith. Such a "blatant attempt to circumvent the OTS's regulatory authority" cannot constitute good faith conduct, even if it was in the best interest of the corporation. Pet. App. 25-26. The court of appeals denied preliminary permissive indemnification, noting that if the OTS fails to prove the charges against petitioners in the administrative proceeding, petitioners will be entitled to mandatory indemnification at that time. Pet. App. 17, 21 n.8.

ARGUMENT

The decision of the court of appeals does not conflict with any decision of this Court or any other federal or state appellate court. Moreover, the decision below was based entirely on the application of state law, and thus presents no issue of national importance. Finally, the court of appeals' analysis was correct on the merits, and will not have any impact on the operation of the bankruptcy system.

1. a. The basic legal issue posed by the decision below is whether, under the law of the Debtors' respective States of incorporation, petitioners were entitled to indemnification during their defense against the OTS charges. No other federal or state appellate court has decided whether a deliberate attempt to frustrate the regulatory authority of a federal agency can constitute "good faith" conduct within the meaning of state indemnification statutes, nor has any other federal court of appeals decided whether actions that are wrongful, but still in the best interest of the corporation, can constitute "good faith" conduct under those statutes. One state court has faced the latter issue, and the decision of the court below is in accord with that state decision. See *Plate* v. *Sun-Diamond Growers of California*, 275 Cal. Rptr. 667, 673 (Ct. App. 1990) (wrongful conduct against a third party precludes a finding of good faith, even if the conduct was in the best interest of the corporation). Thus, the decision below creates no conflict of authority requiring this Court's resolution.

b. Petitioners claim that the court of appeals held that the bankruptcy filings constituted a violation of the Consent Agreement. Pet. 8-9. Petitioners cite a

number of cases for the proposition that the right to file in bankruptcy court cannot be contracted away.[2] Petitioners then argue that the court of appeals' conclusion that the Consent Agreement contractually precluded the Debtors from filing for bankruptcy conflicts with those decisions. Pet. 9-10. The court of appeals, however, did not purport to resolve the issue of whether or not the bankruptcy filings were in breach of the Consent Agreement. The court took that allegation as true solely for the purpose of determining whether permissive indemnification, *i.e.*, reimbursement of corporate agents for their expenses in connection with a legal proceeding that is still pending, was properly granted. Pet. App. 21. The question whether the bankruptcy filings violated the Consent Agreement remains open. If petitioners establish in the civil administrative proceeding brought by the OTS that the filings did not or legally could not violate the Consent Agreement (and they also prevail on the merits with respect to the other

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[2] The cases petitioners cite establish the "well settled principle that an advance agreement to waive the benefits conferred by the bankruptcy laws is wholly void as against public policy." *In re Tru Block Concrete Products, Inc.*, 27 B.R. 486, 492 (Bankr. S.D. Cal. 1983). A consent agreement that precludes a bank that anticipates an OTS takeover from causing its debtor-subsidiaries to file for bankruptcy for the sole purpose of preventing the OTS-controlled bank from collecting on its lines of credit to the subsidiaries can, however, hardly be considered contrary to public policy. Such an agreement *furthers* the public policy behind the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (codified in scattered sections of 12 U.S.C.) which created the OTS in order to ensure that savings and loan institutions remain adequately capitalized. Pet. App. 24.

charges against them), they will be entitled to mandatory indemnification. See Cal. Corp. Code § 317(d) (West Supp. 1996).

2. a. The decision below rested solely on an interpretation of state statutory law. Petitioners sought reimbursement under California's permissive indemnification statute, which provides that

> [a] corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding * * * if that person acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation.

Cal. Corp. Code § 317(b) (West Supp. 1996).[3] Relying on a California case interpreting this statute, *Plate* v. *Sun-Diamond Growers of California*, 275 Cal. Rptr. 667 (Ct. App. 1990), the court concluded that permissive indemnification will not be permitted when an officer is accused of engaging in wrongful conduct against a third party, even if that conduct benefitted the corporation. Pet. App. 25-26. The OTS allegations, if true, indicate that petitioners' purpose in filing for bankruptcy was to frustrate the ability of the OTS to carry out its regulatory authority, and that the bankruptcy filings violated the Consent

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[3] Other officers and employees of the Debtors sought reimbursement from Debtor corporations that were incorporated in Oklahoma and Louisiana. Since the indemnification statutes of all of these States are nearly identical, the court of appeals focused its discussion only on the California statute. Pet. App. 17 n.5 (citing Cal. Corp. Code § 317 (West Supp. 1996); Okla. Stat. Ann. tit. 18, § 1031 (West Supp. 1996); La. Rev. Stat. Ann. § 12:83) (West 1994)). Only the officers to whom California law applies have sought review in this Court.

Agreement with the OTS and petitioners' fiduciary duties to the Bank. The court found that petitioners would not be entitled to indemnification for this conduct under California law. Pet. App. 26. This decision presents no issue calling for this Court's resolution.

b. Petitioners claim that the court of appeals' interpretation of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (codified in scattered sections of 12 U.S.C.) is "extreme" (Pet. 6) and hampers the effectiveness of the Bankruptcy Code. Pet. 10-11. This contention is without merit. As explained above, the decision below was based entirely on an interpretation of California law. The court held that, under the "good faith" provision of the California indemnification statute, petitioners' deliberate attempt to frustrate the success of an impending OTS takeover, in violation of their Consent Agreement with the OTS and in breach of their fiduciary duties to the Bank, did not constitute good faith conduct so as to allow for permissive indemnification under that State's law.

3. a. The court of appeals' decision was correct as a matter of California law, and will not have a significant adverse effect on the bankruptcy system. The California indemnification statute states that a corporation may indemnify a person for his or her defense expenses if the person "acted in good faith *and* in a manner the person reasonably believed to be in the best interests of the corporation." Cal. Corp. Code § 317(b) (West Supp. 1996) (emphasis added). Thus, it is clear that the requirement of good faith is independent of, and in addition to, the requirement that the actions be in the best interest of the

corporation. In reaching this conclusion, the court of appeals followed the decision of the California Court of Appeal in *Plate* v. *Sun-Diamond Growers of California*, 275 Cal. Rptr. 667 (1990) ("That such wrongdoing did not harm or was not against the best interests of the corporation does not establish that the defendants acted in good faith in participating in the wrongful conduct."). In deciding that the requirement of good faith cannot be met when the officer acted wrongfully toward a third party, the court of appeals was also following a rule established in *Plate*. See *ibid.* (the fact "that the conduct giving rise to the action consisted of intentional wrongdoing committed against a third party precludes a finding that [the officers] acted in good faith").[4]

If the OTS charges are true, petitioners clearly did not meet this standard of conduct. The OTS charges allege that the bankruptcy filings not only violated the terms of the Consent Agreement, but were also "a deliberate attempt to prevent the OTS from exercising control over the Bank's assets, thus hindering the OTS's ability to deal effectively with a failing savings and loan" (Pet. App. 25).[5] The OTS charges also al-

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[4] Petitioners are mistaken in contending that the court of appeals wrongly construed the good faith requirement as "good faith vis-a-vis the OTS," instead of "good faith vis-a-vis the corporation." Pet. 10. Under California law, petitioners were required to act in good faith not only vis-a-vis the Debtors, but also vis-a-vis third parties.

[5] When an OTS investigation determined that the Bank had insufficient capital to meet the new FIRREA guidelines, the OTS directed the Bank to infuse sufficient capital in order to meet the minimum capital requirement. When the Bank was unable to submit an adequate plan for overcoming deficiencies, the OTS prepared to exercise its statutory right and duty

lege that the bankruptcy filings constituted a breach of petitioners' fiduciary duties to the Bank, because petitioners "knew that the bankruptcy filings would have a substantially adverse effect on the Bank's ability to collect on the secured and unsecured lines of credit to the Debtors." Pet. App. 9. As directors of the Bank, petitioners were under a fiduciary duty not to cause the Debtors to file for bankruptcy, thereby significantly impairing the Bank's financial health. In breaching that duty, petitioners may well have been acting in the best interest of the Debtors, but they were clearly not acting in good faith toward the Bank.

Petitioners argue that California law holds only that criminal acts against third parties will preclude a finding of good faith, and that the court of appeals was mistaken in equating their conduct with criminal activity. Pet. 10. This contention is incorrect. The California Court of Appeal has held that

> [t]he policy considerations behind th[is] statute[] are that persons who serve the corporation in good faith should, in the absence of certain conduct (fraud, *breach of fiduciary duties, etc.*) be free from liability for corporate acts; indemnification encourages capable persons to perform their duties, secure in the knowledge that expenses incurred by them despite their *honesty and integrity* will be borne by the corporation.

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to enforce the minimum capitalization requirement by taking control of the Bank. According to the OTS charges, petitioners' sole reason for placing the Debtors in bankruptcy was to undermine the ability of the OTS to carry out this statutory duty. Pet. App. 24-25.

Plate, 275 Cal. Rptr. at 671 (emphasis added). Controlling California law thus clearly contemplates that the wrongful conduct against third parties need not be criminal.

b. Petitioners claim that, under the decision of the court of appeals, it is "bad faith *per se* for a corporation to seek the protection of the bankruptcy courts merely because doing so frustrates the regulatory authority of a government agency." Pet. 11. This contention is without merit. The court of appeals held only that it is bad faith for a corporation to seek the protection of the bankruptcy courts *for the express purpose* of frustrating the regulatory authority of a government agency, especially when doing so would breach a fiduciary duty and violate a signed consent agreement with agency. Despite petitioners' fears, the decision below does not "divest the bankruptcy courts of jurisdiction to adjudicate matters merely because they fall within the reach of government regulators." Pet. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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In The

Supreme Court of the United States

October Term, 1995

GERALD G. BARTON AND WILLIAM W. VAUGHAN, III

Petitioners,

v.

LANDMARK LAND COMPANY OF CAROLINA, INC., A DELAWARE CORPORATION, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS GERALD G. BARTON AND WILLIAM W. VAUGHAN, III IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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COME NOW Petitioners, Gerald G. Barton and William W. Vaughan, III, and submit this Supplemental Brief pursuant to Rule 15.7 of the Rules of the Supreme Court of the United States. On May 15, 1996 Petitioners Gerald G. Barton, William W. Vaughan, III and Joe W. Walser filed the instant Petition for Writ of Certiorari in this Court. On June 19, 1996 Petitioner Joe W. Walser moved to dismiss his Petition, and the Court granted his motion on July 10, 1996. The remaining Petitioners now file this Supplemental Brief to address the significance of the Court's recent decision in *United States v. Winstar Corporation*, ___ U.S. ___, ___ S. Ct. ___, 64 U.S.L.W 4739 (S.Ct. Op. No. 95-865, decided July 1, 1996).

DISCUSSION

In *Winstar* this Court held that the Government can be required to pay damages for breach of agreements to allow entities acquiring weak savings and loans to count supervisory goodwill towards capital reserve requirements imposed by federal regulations, notwithstanding that the later-enacted Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) forbids that practice. The Court's decision in *Winstar* is significant to the instant Petition for a Writ of Certiorari because it implicitly rejects the premise underlying the decision below in this case, which is that FIRREA broadly displaces rights previously conferred by the Government. In *Winstar* those rights were conferred by contract; in this case they were conferred by the Bankruptcy Act.

The Federal Home Loan Bank Act created the Federal Home Loan Bank Board ("Bank Board"), which was authorized to channel funds to thrifts for loans on houses. The Home Owners' Loan Act of 1933 authorized the Bank Board to charter and regulate Federal Savings and Loan Associations. The National Housing Act created the Federal Savings and Loan Insurance Corporation ("FSLIC"), under the Bank Board's authority, with responsibility to insure thrifts' deposits and to regulate all federally insured thrifts. The resulting regulatory scheme worked reasonably well until the combination of high interest rates and inflation in the late 1970's and early 1980's brought about a new crisis in the thrift industry.

In an effort to save failing thrifts, the Bank Board and FSLIC entered into agreements with various entities to acquire failed thrifts. Glendale Federal Bank, FSB, Winstar Corporation, and the Statesman Group, Inc. ("plaintiffs"), were three such entities that acquired failed thrifts in the 1980's pursuant to agreements with the Bank Board and the FSLIC. Included in those agreements were provisions allowing the plaintiffs to count the supervisory goodwill created in the merger transactions toward regulatory capital requirements.

Subsequently, Congress passed FIRREA in an attempt to set new regulatory guidelines for the ailing thrift industry. The impact of FIRREA's new capital requirements upon institutions that had acquired failed thrifts in exchange for supervisory goodwill was swift and severe. With the object of preventing the collapse of the thrift industry, FIRREA made enormous changes in the structure of the federal thrift regulation by 1) abolishing the

FSLIC and transferring its functions to other agencies; 2) creating a new thrift deposit insurance fund under the Federal Deposit Insurance Corporation ("FDIC"); 3) replacing the Bank Board with the Office of Thrift Supervision ("OTS"), a treasury department office with responsibility for the regulation of all federally insured savings associations; and 4) establishing the Resolution Trust Corporation ("RTC") to liquidate or otherwise dispose of certain closed thrifts and their assets. More importantly to the plaintiffs, FIRREA also obligated the OTS to prescribe and maintain uniformly applicable capital standards for savings associations in accord with strict statutory requirements, including excluding from core capital "unidentifiable, intangible assets," 12 U.S.C. § 1464 (T)(9)(a), such as supervisory goodwill. The OTS then promptly issued regulations implementing the new capital standards along with a bulletin noting that FIRREA "eliminates [capital and accounting] forebearances" previously granted to certain thrifts. The *Winstar* suit ensued.

The Supreme Court recognized and in fact recited the important public interests that FIRREA serves. The Court also acknowledged the various immunities that preserve the prerogative of the Government to legislate in the public interest. The Court nevertheless held that a contract is an agreement to allocate risks of future events, which can be honored without damaging the Government's ability to legislate as it sees fit. Implicit in the Court's decision in *Winstar* is that when the Government by contract confers rights upon private citizens, those rights survive and coexist with subsequent legislation,

even legislation as important and comprehensive as FIRREA. *A fortiori,* rights conferred by federal statute must also survive and coexist with FIRREA. Petitioners contend that their exercise of rights under the Bankruptcy Act should not be regarded as an act of bad faith merely because such exercise is regarded as an "attempt to undermine the regulatory authority" of the OTS. *See Landmark Land Company of Carolina, Inc., a Delaware Corp., et al. v. Barton, et al.,* 76 F.3d 553, 565 (4th Cir. 1996). To hold otherwise is to accord FIRREA preemptive effect far beyond what the Supreme Court has so far recognized.

Respectfully submitted,

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